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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~294~~ 39

DANIEL A. BECKWITH AND GILMAN HENRY, PLAINTIFFS IN ERROR,

vs.

ANDREW J. BEAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF VERMONT.

FILED OCTOBER 23, 1878.

SUPREME COURT OF THE UNITED STATES.

No. 294.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the district of Vermont, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Andrew J. Bean, of Manchester, in the State of New Hampshire, plaintiff, and Gilman Henry, of Woodstock, in the State of Vermont, and Danil N. Beckwith, of Sutton, in the State of Vermont, a manifest error hath happened, to the great damage of the said Henry and Beckwith, as is said and as appears by the complaint on file: We being willing that such error, if any have been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this
b behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol at Washington, together with this writ, so that you have the same at the said place before the justices aforesaid on the second Monday of October, A. D. 1875, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error which of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 9th day of October, in the year of our Lord one thousand eight hundred and seventy-five, and of
c the Independence of the United States the one hundredth.

[SEAL.] B. B. SMALLEY,
Clerk of the Circuit Court of the United States for the District of Vermont, in the Second Circuit.

It appearing that the aforesaid writ of error issues and is sued out by plaintiffs in error by direction of a department of the government, to wit, the Secretary of War of the United States, it is ordered that no bond, obligation, or security shall be required from the pl'ffs in error, either to prosecute said suit or to answer in damages or costs, and that said writ of error without bond shall operate as a supersedeas or stay of execution in the same manner and to the same extent as if bond had been given.

N. SHIPMAN,
One of the Judges of the Circuit Court of the United States for the District of Vermont, in the Second Circuit.

I hereby certify that the foregoing writ of error is sued out by pl'fs in error by direction of a department of the Government of the United States.

B. F. FIFIELD,
U. S. Att'y for Vermont.

(Indorsed:) Andrew J. Bean v. Gilman Henry & Daniel N. Beckwith. Writ of error. Filed October 9, 1875. B. B. Smalley, clerk.

The within writ is allowed.

N. SHIPMAN, *Judge.*

d UNITED STATES OF AMERICA,
District of Vermont, ss:

I, Bradley B. Smalley, clerk of the circuit court of the United States of America for the district of Vermont, in the second circuit, by virtue of the within writ of error and in obedience thereto, do hereby certify that the following pages, numbered from 1 to 135 inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case Daniel N. Beckwith and Gilman Henry, plaintiffs in error, against Andrew J. Bean, defendant in error, as the same remains of record and on file in said cause.

In testimony whereof I have caused the seal of said court to be hereunto affixed at the city of Burlington in said Vermont district, in the second circuit, this 22d day of October, A. D. 1875, and of the Independence of the United States the one hundredth.

[SEAL.] B. B. SMALLEY, *Clerk.*

1 United States circuit court for the district of Vermont.

ANDREW J. BEAN
vs.
DANIEL N. BECKWITH & GILMAN HENRY.

Be it remembered that at a term of the circuit court of the United States begun and holden at Windsor, in and for the Vermont district, in the second circuit, on the fourth Tuesday of July, A. D. 1866, comes Daniel N. Beckwith and Gilman Henry, by their attorney, Hon. D. C. Denison, and bring into court now here an exemplified copy of the record from the county court within and for the county of Orleans, in the State and district of Vermont, which said record is in the words and figures following:

STATE OF VERMONT,
Orleans County, ss:

To any sheriff or constable in the State, greeting:

By the authority of the State of Vermont, you are hereby com-
2 manded to attach the goods, chattels, or estate of Daniel N. Beckwith, of Sutton, in Caledonia County, and Gilman Henry, of Woodstock, in the county of Windsor, to the value of fifty thousand dollars, and them notify thereof according to law; and also notify them to appear before the county court next to be held at Irasburgh, within and for the county of Orleans, on the fourth Tuesday of December, A. D. 1865, then and there to answer to Andrew Jackson Bean, of Glover, in the county of Orleans, in a plea of trespass, for that the defendants heretofore, to wit, on the eleventh day of November, A. D. 1864, at Newbury, in the county of Orange, with force and arms, assaulted the plaintiff, and seized him by force and against his will, carried him to Windsor, in the county of Windsor, and violently forced him within the State's prison at said Windsor, and confined him within a dark and loathsome cell, then and there constructed for thieves, burglars, and other convicts, and then and there beat and bruised plaintiff with fists and clubs, restrained him within said cell, and deprived him of his liberty
3 and insulted him, so confined in said dungeon for the space of seven months, by which means plaintiff's health was destroyed and his life despaired of, and suffered distress and anguish for the loss of liberty and the disgrace and ignominy of such long confinement

among wretched convicts, and great pecuniary loss, to wit, five thousand dollars, by reason of being thus taken from his business and confined in said prison for said seven months.

And the plaintiff avers that the defendants, when plaintiff was so confined in said cell and prison, for the purpose of extorting money from the plaintiff, wickedly and maliciously threatened the plaintiff that they would inflict or cause to be inflicted greater injuries upon the plaintiff unless he would pay them a great sum of money, to wit, eight hundred dollars, and other enormities the defendants to the plaintiff then and there did, against the peace and to the damage of the plaintiff fifty thousand dollars, for the recovery of which, with just costs, this suit is brought.

4 Fail not, but make service and return according to law.

Dated at Irasburgh, in the county of Orleans, the 3d day of August, A. D. 1865.

N. CUSHMAN, *Clerk.*

[50-cents stamp. N. C., clerk. Aug. 5, 1865.]

N. T. Sheafe recognized to the defendants in the sum of twenty dollars as surety for costs of prosecution as the law directs. Before me.

I. N. CUSHMAN, *Clerk.*

STATE OF VERMONT,
Caledonia County, ss:

At Sutton, on this 11th day of August, A. D. 1865, by virtue of this writ, I attached, as the property of the within-named defendant, all the real estate in the town of Sutton, with the appurtenances thereto belonging; also, all the hay and grain in the barns and sheds on said defendant Beckwith's farm; and on this same day I left a true and attested copy of this attachment, with a description of the estate so
5 attached endorsed thereon, in the town clerk's office of said town of Sutton; also, on this same day I made further service of this writ by attaching, as the property of the defendant Beckwith, two horses, one hundred sheep, one cow, three harnesses, also one single wagon; and on this same day I delivered to the said defendant Beckwith a true and attested copy of this writ, with a list of the property so attached endorsed hereon, thereon endorsed.

And now, on this 12th day of August, A. D. 1865, at Woodstock, in the county of Windsor, I made further service of this writ by attaching, as the property of Gilman Henry, one of the within-named defendants, all the real estate in the town of Woodstock, with the appurtenances thereto belonging; also, all the hay in the barns on the premises where the said defendant Henry now lives; and on the same day I left a true and attested copy of this attachment, with a description of the estate so attached endorsed thereon, in the town clerk's office of said town of Woodstock; and on the same day I left a true and attested copy
6 of this attachment, with a list of the property so attached endorsed thereon, at the house of the then usual abode of said defendant, in the hands of William D. Henry, a person of sufficient discretion, then resident therein.

Attest:

S. G. BEAN,
Dept. Sheriff.

T., 204 miles, $12.24; 4 copies, $8.00; securing property, 4.00; fees paid T. clerks, .40; $24.64.

(Indorsed:) A. J. Bean vs. Daniel N. Beckwith and Gilman Henry. Orleans County court, December term, 1865. Seafe & Redfield, att'ys.

Plff's costs.

Writ	2 00
Service	24 64
Travel & entry	1 98
Term fee	2 00
Att'y fee	3 00
Court fee	2 83
	$36 45
Copies sent to U. S. court, p'd for by defendants	5 00
	$41 45

Taxed as above.

I. N. CUSHMAN, *Clerk.*

7 In Orleans Co. court, December term A. D. 1865.

A. J. BEAN
vs.
D. N. BECKWITH & GILMAN HENRY.

Defendants' petition to remove the aforesaid cause to the United States circuit court.

To the Hon. Orleans County court, now in session:

Your petitioners, Daniel N. Beckwith, of Sutton, in Caledonia County, and Gilman Henry, of Woodstock, in the county of Windsor, at the time of entering their appearance in the above-entitled cause in said Orleans County court, and at the term of said court to which the said cause is made returnable, come and show to the said court that, on the 3d day of August, A. D. 1865, the said Andrew J. Bean, of Glover, in the county of Orleans aforesaid, prayed out his writ of attachment of that date against your petitioners, signed by I. N. Cushman,
8 clerk, made returnable before said Orleans County court, to be holden at Irasburgh, within and for said county, on the 4th Tuesday of December, A. D. 1865, declaring in a plea of trespass for an assault, battery, and imprisonment of the said Bean by your petitioners, and demanding in damages the sum of fifty thousand dollars, and which was duly served on your petitioners, and entered in Orleans County court, which cause is now pending therein, as from said writ remaining among the files of said county court will more fully appear.

And your petitioners further show that as to the said supposed assault, battery, and imprisonment, or wrongs and injuries, declared upon in the said declaration of the said Andrew J. Bean, they were done and committed by your petitioners during the present rebellion, and on or about the 11th day of November, A. D. 1864, at or near Well's River, in the town of Newbury, V't, and thereafterwards at other places in said Vermont; all of which were done by virtue of and under
9 authority derived from and exercised under the President of the United States and the acts of Congress.

And your petitioners further show that at the time when the said supposed trespasses in the said declaration mentioned were committed by your petitioners, your petitioner Gilman Henry was provost-marshal within and for the second Congressional district of the State of Ver-

mont, and your petitioner Daniel N. Beckwith was a deputy provost-marshal within and for said district, and they were, as such, in the military service of the United States, subject to the rules and regulations adopted for the government of the Bureau of the Provost-Marshal-General of the United States, and bound to obey the orders of their superior officers.

And your petitioners further show that previous to and at the time when said supposed wrongs and injuries in the said declaration mentioned are alleged to have been committed by your petitioners, that he, the Andrew J. Bean, was supposed to have procured and
10 enticed soldiers in the service of the United States to desert, and to have harbored and concealed, and carried away, or aided in carrying away, such deserters, knowing them to be such, contrary to the form, force, and effect of the statutes of the United States in such case made and provided, when your petitioners committed the supposed wrongs and injuries in the said declaration mentioned, and arrested and detained the said Andrew J. Bean, as they lawfully might, and which was done under the authority aforesaid, and not otherwise.

And your petitioners say that they desire to have the cause so commenced as aforesaid against them by the said A. J. Bean, and pending in said Orleans County court, removed to the next circuit court of the United States, to be holden at Windsor, within and for the district of Vermont, on the 4th Tuesday of July, A. D. 1866; and your petitioners hereby offer good and sufficient surety, in such sum as the said county court shall order, for their filing in said circuit court, on the first
11 day of its session, copies of the process in said action and proceedings therein, and for their (your petitioners') appearance in said circuit court, and for entering special bail in said cause, if required, as required by act of Congress, approved March 3d, 1863.

And your petitioners pray said county court to accept surety, so offered as aforesaid, and so proceed no further in said cause, but to make such further order as may be necessary to remove said suit into said circuit court.

GILMAN HENRY.
DANIEL N. BECKWITH.

I, Gilman Henry, of Woodstock, in the county of Windsor and State of Vermont, of lawful age, on oath say that the facts set forth and stated in the foregoing petition subscribed by me are according to truth.

GILMAN HENRY.

STATE OF VERMONT,
Windsor County, ss:

At Woodstock, in said county, on the 22d day of December,
12 1865, personally appeared Gilman Henry and made oath that the facts set forth in his foregoing petition are true.

LEWIS PRATT,
Notary Public.

[5-cents rev. stamp. L. P. Dec. 22, '65.]

I, Daniel N. Beckwith, of Sutton, in the county of Caledonia and State of Vermont, of lawful age, on oath say that the facts set forth and stated in the foregoing petition subscribed by me are according to truth.

DANIEL N. BECKWITH.

STATE OF VERMONT,
Orleans County, ss:

At Irasburgh, in said county, on this 26th day of December, 1865, personally appeared Daniel N. Beckwith and made oath that the facts set forth in the foregoing affidavit are true.

W. J. HASTINGS,
Assistant Judge.

[5-cents rev. stamp. W. J. H. Dec. 26, 1865.]

13 I, Dudley C. Denison, of Royalton, in the county of Windsor and State of Vermont, on oath say that on the 26th of December, 1865, I delivered to N. T. Sheafe, attorney of Andrew Bean, a true copy of the foregoing petition, together with a notice thereto attached, and which notice is in the words following, to wit:

"The petitioner, Andrew J. Bean, of Glover, in the county of Orleans, will take notice that the petition, of which the foregoing is a true copy, will be brought in for a hearing at the present term of Orleans County court (Dec. term, 1865) by the petitioners.

"Irasburgh, V't Dec. 26, 1865.

"DUDLEY C. DENISON,
"Att'y of Petitioner."

DUDLEY C. DENISON,
Att'y of Petitioner.

Subscribed and sworn to this 26th day of December, A. D. 1865.

W. J. HASTINGS,
Assistant Judge.

[5-cents rev. stamp. W. J. H. Dec. 26, 1865.]

14 (Indorsed:) Petition. Daniel N. Beckwith & Gilman Henry in case of Andrew J. Bean. Orleans County court, Dec. term, 1865. Orleans County court, Dec. term, 1865. Rec. & filed 1st day of term. Attest, I. N. Cushman, clerk.

Orleans County court, Dec'r term, 1865.

ANDREW J. BEAN
vs.
DANIEL N. BECKWITH & GILMAN HENRY.

The defendants in the above-entitled cause having filed their petition in this court, and at the present term thereof, praying that said cause be removed for trial to the next circuit court of the United States for the district of Vermont, which petition is duly verified by the affidavits of the defendants, and the said defendants offering good and sufficient surety for their filing in said circuit court on the first
15 day of its session copies of the process in said suit, and other proceedings against them, and for the appearance of said defendants in said circuit court, and entering special bail therein, according to the provisions of an act of Congress, approved March 3d, 1863:

Therefore, it is ordered by the court that the bond and security of this date, so offered by the said defendants as aforesaid, be accepted and filed in said court for the benefit of said plaintiff, and that the said cause be removed to the circuit court of the United States in and for the district of Vermont, next to be holden at Windsor, in said district, on the fourth Tuesday of July, A. D. 1866.

Done in court this 26th day of December, A. D. 1865.

WILLIAM C. WILSON,
Presiding Judge.

STATE OF VERMONT,
Orleans County, ss:

I, Isaac N. Cushman, clerk of the county court in and for the county of Orleans, in the State of Vermont, the same being a court of
16 record and having a seal, as hereto attached, do hereby certify that the above and foregoing is a true and correct copy of the process and other proceedings in the case, Andrew J. Bean vs. Daniel N. Beckwith and Gilman Henry, brought to and entered in said court at a term thereof holden at Irasburgh, within and for said county, on the 4th Tuesday of December, A. D. 1865.

In witness whereof I have hereunto affixed the seal of said court and subscribed my name at Irasburgh, in said county, this 3d day of July, A. D. 1866.

[L. S.] I. N. CUSHMAN, *Clerk.*

[5-cent int. rev. stamp. I. N. C., clerk. July 3, 1866.]

STATE OF VERMONT,
Orleans County, ss:

I, William C. Wilson, judge of the supreme court of the State of Vermont, and ex-officio chief and presiding judge of Orleans County court, the same being a court of record and having a seal, do hereby
17 certify that I. N. Cushman, who has signed the above certificate, was at the time of signing the same, and still is, clerk of Orleans County court; that his signature thereto is genuine; that his attestation is in due form, and full faith is thereunto given in all the courts of this State; and that the seal thereunto affixed is the seal of said county court.

Given under my hand at Irasburgh, in Orleans County, this 3d day of July, A. D. 1866.

WILLIAM C. WILSON,
Presiding Judge.

And thereupon, on motion of the attorney for said defendants, Daniel N. Beckwith and Gilman Henry, it was ordered that said cause be entered on the docket of this court, and it was so entered.

And afterwards, at said term, said cause was continued until the October term, A. D. 1866, of this court.

And afterwards, at said October term, 1866, said cause was continued until the July term, A. D. 1867, of this court.

18 And afterwards, at said July term, 1867, said cause was continued until the October term, A. D. 1867, of this court.

And afterwards, at said October term of this court, said cause was continued until the July term, 1868, of this court.

And afterwards, at the said July term, 1868, said cause was continued until the October term, A. D. 1868, of this court.

And afterwards, at said October term, 1868, said cause was continued until the July term, 1869, of this court.

And afterwards, at said July term, 1869, said cause was continued until the October term, 1869, of this court.

And afterwards, at said October term, 1869, said cause was continued until the February term A. D. 1870, of this court.

And afterwards, at said February term, 1870, said cause was continued to the July term, A. D. 1870, of this court.

19 And afterwards, on the 5th day of July, 1870, the said defendants, Beckwith and Henry, filed their pleas in said suit in the words and figures following:

United States circuit court, July T., 1869, circuit of Vermont.

ANDREW J. BEAN
vs.
D. N. BECKWITH & GILMAN HENRY.

And now come the defendants, by their att'y, and defend, &c., when, &c., and say they are not guilty in manner and form as the plaintiff hath *hath* alleged, and thereupon put themselves upon the country.

B. F. FIFIELD, *Att'y.*

And for further plea in this behalf, by leave of court first had and obtained, these defendants say the pl'ff's ought to have and maintain his said action, because they say that at the time of committing the said several alleged grievances in said declaration mentioned, and for
20 a long time, to wit, one year before and after that time, a gigantic rebellion was in existence and on foot against the laws and Government of the United States, and the public safety was greatly jeopardized and imperiled. And these defendants further say that it then and there became necessary, and in fact large bodies of soldiers were raised in the Northern States, and more especially in military district embracing the second Congressional district of Vermont, for the purpose of suppressing said rebellion and insuring the public safety. And these defendants further say that, at the time of said supposed grievances in said declaration mentioned, and for a long time, to wit, one year before and after that time, the defendant Henry was a military officer in the service of the United States, to wit, a provost-marshal within and for the military district embracing said second Congressional district of Vermont,
21 and the said Beckwith was, during the same time, an assistant provost-marshal in the same district, acting in aid of the said Henry in the performance of his duties as such provost-marshal.

And these defendants further say that, to wit, on the 20th day of Nov., A. D. 1869, to wit, at Newbury, in the county of Orange, and in said military district of the second Congressional district of Vermont, the plaintiff then and there being charged with having been guilty of disloyal practices in aid of the then existing rebellion against the laws and Government of the United States, and with affording aid and comfort to the rebels against the authority of the United States, to wit, with enticing soldiers to desert from the Army of the United States, to wit, at Woodstock, in the county of Windsor, in said military district of the second Congressional district of Vermont, to wit, on the 15th day of June, A. D. 1864, these defendants, as such military officers, and not otherwise, did arrest the plaintiff on the charges aforesaid, these defendants, at the time of said arrest, then and there having reasonable cause to sup-
22 pose said charge was true.

And these defendants further say that afterwards, to wit, at Windsor, in the county of Windsor, in the military district aforesaid,

they did deliver over the plaintiff to the keeper of the State-prison at said Windsor for safe custody until he could be brought before the civil tribunals of the United States within and for the district of Vermont, on the charges aforesaid, where he was detained on the charges aforesaid until afterwards, to wit, on the 1st day of May, A. D. 1865, when, to wit, at Woodstock, in the county of Windsor, the plaintiff was brought before Warren C. French, he then being a United States commissioner within and for the judicial district of Vermont, and the plaintiff then and there being charged with the offences aforesaid, after a full hearing, was held to bail by said commissioner for his appearance before the United States circuit court then next to be held at Windsor on the 4th Tuesday of July, A. D. 1865, to answer to the charges aforesaid,
23 and to such things as might be then and there alleged against him, as by said commissioner's record will more fully appear.

And these defendants further say that at and from the time of said arrest up to the 4th Tuesday of July, A. D. 1865, there was no session of a United States circuit court nor of a grand jury in attendance upon any United States court within the district and circuit of Vermont.

And these defendants further say that in making said arrest, imprisonment, and detention, the defendant Henry acted in the military capacity of provost-marshal as aforesaid, and the said Beckwith in aid of him the said Henry, and not otherwise; and that the arrest, detention, and imprisonment of the plaintiff as aforesaid, was made and done under the authority and order of the then President of the United States, to wit, Abraham Lincoln, since deceased, whose order, as Commander in-Chief of the Armies of the United States, by the rules and regula-
24 tions of the Army, these defendants were bound to obey.

And these defendants further say that the supposed arrest, imprisonment, and grievances in said declaration mentioned, are the same arrest, imprisonment, and detention herein set forth, and none other; all which the defendants are ready to verify.

Wherefore they pray judgment, &c.

By B. F. FIFIELD, *Att'y.*

And for further plea in this behalf, by leave of court first had and obtained, these defendants say the plaintiff ought not to have and maintain his said action, because they say that at the time of committing of the several alleged grievances in said declaration mentioned, and for a long time, to wit, one year before and after that time, a gigantic rebellion was in existence and on foot against laws and Government of the United States, and the public safety was greatly jeopardized and imperiled.

And these defendants further say that it then and there be-
25 came necessary to raise, and in fact large bodies of soldiers were raised in the Northern States, and more especially in the military district embracing the second Congressional district of Vermont, for the purpose of suppressing said rebellion and insuring the public safety.

And these defendants say that at the time of said supposed grievances in said declaration mentioned, and for a long time, to wit, one year before and after that time, the defendant Henry was a military officer in the service of the United States, to wit, a provost-marshal within and for the military district embracing said second Congressional district of Vermont, and the said Beckwith was, during the same time, an assistant provost-marshal in the same district, acting in aid of the said Henry in the performance of his duties as such provost-marshal.

And these defendants further say that, to wit, on the 20 day of

Nov., A. D. 1864, to wit, at Newbury, in the county of Orange, and in said military district of the second Congressional district of Ver-
26 mont, the plaintiff then and there being charged with having been guilty of disloyal practices in aid of the then existing rebellion against the laws and Government of the United States aforesaid, and with affording aid and comfort to the rebels against the authority of the United States, to wit, enticing soldiers to desert from the Army of the United States, to wit, at Woodstock, in the county of Windsor, in said military district of the second Congressional district of Vermont, to wit, on the 15 day of June, A. D. 1864, these defendants did arrest the plaintiff on the charges aforesaid; and afterwards, to wit, on the same day, to wit, at Windsor, in the county of Windsor, in the military district aforesaid, they did deliver over the plaintiff to the keeper of the State-prison at said Windsor for safe custody until he could be brought before the civil tribunals of the United States within and for the district of Vermont, on the charges aforesaid, where the plaintiff was detained on the charges aforesaid until afterwards, to wit, on
27 the first day of May, A. D. 1865, when, to wit, at Woodstock, in the county of Windsor, the plaintiff was brought before Warren C. French, he then being a United States commissioner within and for the judicial district of Vermont, and the plaintiff being then and there charged with the offences aforesaid was held to bail for his appearance before the United States circuit court then next to be held at Windsor, on the 4 Tuesday of July, A. D. 1865, to answer to the charges aforesaid and to such things as might be then and there alleged against him, as by said commissioner's record will more fully appear.

And these defendants further say that at and after the time of the arrest up to the 4 Tuesday of July, A. D. 1865, there was no session of the United States circuit court, nor of a grand jury in attendance upon any, United States court, within the district and circuit of Vermont.

And these defendants further say that in making said arrest, imprisonment, and detention, the defendant Henry acted in his
28 military capacity of provost-marshal aforesaid, and the said Beckwith in aid of him, the said Henry, and not otherwise; and that the arrest, imprisonment, and detention of the plaintiff, as aforesaid, was made and done by these defendants under the authority and by the order of the then President of the United States, to wit, Abraham Lincoln, since deceased, whose orders as Commander-in-Chief of the Armies of the United States, by the rules and regulations of the Army, these defendants were bound to obey.

And these defendants further say that the supposed arrest, imprisonment, and grievances in said declaration mentioned are the same arrest, imprisonment, and detention herein set forth, and none other; all which the defendants are ready to verify.

Wherefore they pray judgment, &c.

By B. F. FIFIELD, *Att'y.*

And for further plea in this behalf, by leave of court first had
29 and obtained, these defendants say that said cause ought to be dismissed because, they say, that at the time of the committing of the several alleged grievances in said declaration mentioned, and for a long time, to wit, one year before and after that time, a gigantic rebellion was in existence and on foot against the laws and Government of the United States and the public safety was greatly jeopardized and imperiled; and these defendants further say that it then and there became necessary to raise, and in fact large bodies of soldiers were raised,

in the Northern States, and more especially in the military district embracing the second Congressional district of Vermont, for the purpose of suppressing said rebellion and in securing the public safety.

And these defendants further say that at the time of said supposed grievances in said declaration mentioned, and for a long time, to wit, one year before and after that time, the defendant Henry was a military officer in the service of the United States, to wit, a provost-mar-
30 shal within and for the military district embracing said second Congressional district of Vermont, and the said Beckwith was, during the same time, an assistant provost-marshal in the same district, acting in aid of the said Henry in the performance of his duties as such provost-marshal

And these defendants further say that, to wit, on the 20th day of November, A. D. 1864, to wit, at Newbury, in the county of Orange, and in said military district of the second Congressional district of Vermont, the plaintiff then and there being charged with having been guilty of disloyal practices in aid of the then existing rebellion against the laws and Government of the United States, and with affording aid and comfort to the rebels against the authority of the United States, to wit, with enticing soldiers to desert from the Army of the United States, to wit, at Woodstock, in the county of Windsor, in said military district of the second Congressional district of Vermont, to wit, on the 15th day
31 of June, A. D. 1864, these defendants, as such military officers, and not otherwise, did arrest the plaintiff on the charges aforesaid.

And these defendants further say that, afterwards, to wit, on the same day, to wit, at Windsor, in the county of Windsor, in the military district aforesaid, they did deliver over the plaintiff to the keeper of the State-prison at said Windsor for safe custody until he could be brought before the civil tribunals of the United States within and for the district of Vermont, on the charges aforesaid, where he was detained on the charges aforesaid until afterwards, to wit, on the 1st day of May, A. D. 1865, when, to wit, at Woodstock, in the county of Windsor, the plaintiff was brought before Warren C. French, he then being a United States commissioner within and for the judicial circuit of Vermont, and the plaintiff then and there being charged with the offences aforesaid, after a full hearing in the premises, was held to bail by said com-
32 missioner for his appearance before the United States circuit court, then next to be held at Windsor, on the 4th Tuesday of July, A. D. 1865, to answer to the charges aforesaid, and to such things as might be then and there alleged against him, as by said commissioner's record will more fully appear.

And these defendants further say that at and from the time of said arrest up to the 4th Tuesday of July, A. D. 1865, there was no session of a United States circuit court, nor of a grand jury in attendance upon any United States court within the district and circuit of Vermont; and these defendants further say that, in making said arrest, imprisonment, and detention, the defendant Henry acted in the military capacity of provost-marshal, as aforesaid, and the said Beckwith in aid of him, the said Henry, and not otherwise; and that the arrest, imprisonment, and detention of the plaintiff, as aforesaid, was made and done under
33 the authority and by the order of Abraham Lincoln, then President of the United States, whose order as Commander-in-Chief of the Armies of the United States, by the rules and regulations of the Army, the defendants were bound to obey.

And these defendants further say that the supposed arrest, imprisonment, and grievances in said declaration mentioned are the same arrest,

imprisonment, and detention herein set forth, and none other; all which the defendants are ready to verify.

Wherefore they pray judgment, &c.

By B. F. FIFIELD, *Att'y.*

And on the said 5th of July, A. D. 1870, the plaintiff filed his replication to the said pleas in the following words:

Replication; general demurrer.—N. T. Sheafe, att'y for pl'ff.

United States circuit court, July term, circuit of Vermont.

ANDREW J. BEAN
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34 And now comes the plaintiff, by his attorneys, and prosecutes his said suits, &c., when, &c.; and, as to the defendants' plea by them first above pleaded, whereupon the' put themselves upon the country, doth the like.

By his attorneys:

GEO. N. DALE & N. T. SHEAFE.

And for replication to the plea of the defendants by them severally above pleaded, the plaintiff saith that the said defendants, of their own wrong, and without the causes in said plea alleged, did assault the plaintiff, and him beat, bruise, and imprison in manner and form as the plaintiff in his said declaration hath thereof alleged against them, the said defendants; and thereupon puts himself on the country.

By his attorneys:

GEORGE N. DALE & N. T. SHEAFE.

And for replication to the defendants' third plea, by them thirdly above pleaded, the plaintiff saith that said plea and the matters
35 and things therein alleged are insufficient in law to be replied unto by this plaintiff, or to have the right of this plaintiff to recover damages for the wrongs and injuries in plaintiff's declaration thereof alleged against them, the said defendants; and this the said plaintiff is ready to verify.

Whereupon the plaintiff prays judgment for his damages for the wrongs and injuries in his said declaration alleged against them, the said defendants, and by the plaintiff most unjustly sustained, and for his costs.

By his attorneys:

G. N. DALE & N. T. SHEAFE.

And afterwards, at the July term, A. D. 1870, of said court, the said cause came on for hearing before the Hon. Lewis B. Woodruff, circuit judge within and for the second circuit, and Hon. David A. Smalley, district judge within and for the Vermont district, on the pleadings as hereinbefore set forth; and, after hearing counsel for plaintiff and defendants, the cause was continued until the October term, A. D. 1870, of this court.

36 And afterwards, at said October term, A. D. 1870, the said cause was continued until the February term, A. D. 1871, of this court.

And afterwards, at said February term, the said cause was continued until the July term, A. D. 1871, of this court.

And afterwards, at said July term, A. D. 1871, the said cause was continued to the October term, A. D. 1871.

And at said October term, A. D. 1871, said cause came on again for hearing before Hon. Lewis B. Woodruff, circuit judge, and Hon. David A. Smalley, district judge, and thereupon, by consent of parties, it was ordered that the defendants have leave to file amendments to their third and fourth pleas; and thereupon amendments to said third and fourth pleas were filed, which amendments were in the following words:

37 ANDREW J. BEAN
v.
GILMAN HENRY DANIEL
Beckwith.

3d and 4th pleas as amended.

And for further plea in this behalf, by leave of court first had and obtained, the defendants say that plaintiff ought not to have and maintain his said action, because, they say that at the time of the committing of the several alleged grievances in said declaration mentioned, and for a long time, to wit, one year before and after that time, a gigantic rebellion was in existence and on foot against laws and Government of the United States, and the public safety was greatly jeopardized and imperiled; and these defendants further say that it then and there became necessary to raise, and in fact large bodies of soldiers were raised in the Northern States, and more especially in the military district embracing the second Congressional district of Vermont, for the pur-
38 pose of suppressing said rebellion and insuring public safety.

And these defendants further say that at the time of said supposed grievances in said declaration mentioned, and for a long time, to wit, one year before and after that time, the defendant Henry was a military officer in the service of the United States, to wit, a provost-marshal within and for the military district embracing the said second Congressional district of Vermont, and the said Beckwith was, during the same time, an assistant provost marshal in the same district, acting in aid of the said Henry in the performance of his duties as such provost-marshal.

And these defendants further say that, to wit, on the 20th day of November, A. D. 1864, to wit, at Newbury, in the county of Orange, and in said military district of the second Congressional district of Vermont, the plaintiff then and there being charged with having been guilty of disloyal practices in aid of the then existing rebellion against the
39, 40 laws and Government of the United States aforesaid, and with affording aid and comfort to the rebels against the authority of the United States, to wit, with enticing soldiers to desert from the Army of the United States, to wit, at Woodstock, in the county of Windsor, in said military district of the second Congressional district of Vermont, to wit, on the 15th day of June, A. D. 1864, these defendants did arrest the plaintiff on the charges aforesaid; and afterwards, to wit, on the same day, to wit, at Windsor, in the county of Windsor, in the military district aforesaid, they did deliver over the plaintiff to the keeper of the State-prison, at said Windsor, for safe custody until he could be brought

before the civil tribunals of the United States within and for the district of Vermont, on the charges aforesaid, where the plaintiff was detained on the charges aforesaid until afterwards, to wit, 1st day of May, A. D. 1865, where, to wit, at Woodstock, in the county of Windsor, the plaintiff was brought before Warren C. French, he then being a United States commissioner within and for the judicial district of Vermont, and
41 the plaintiff being then and there charged with the offences aforesaid, after a full hearing in the premises, was held to bail for his appearance before the United States circuit court, then next to be held at Windsor on the 4th Tuesday of July, A. D. 1865, to answer to the charges aforesaid, and to such things as might be then and there alleged against him, as by said commissioner's record will more fully appear.

And these defendants further say that at and after the time of the said arrest, up to the 4th Tuesday of July, A. D. 1865, there was no session of the United States circuit court, nor of a grand jury in attendance upon any United States court, within the district and circuit of Vermont,

And these defendants further say that in making said arrest, imprisonment, and detention, the defendant Henry acted in his military capacity of provost-marshal aforesaid, and the said Beckwith in aid of him, the said Henry, aid not otherwise; and that the arrest, im-
42 prisonment, and detention of the plaintiff as aforesaid was made and done by these defendants without unnecessary force and violence, under the authority and by the order of the then President of the United States, to wit, Abraham Lincoln, since deceased, whose orders as Commander-in-Chief of the Armies of the United States, by the rules and regulations of the Army, these defendants were bound to obey.

And these defendants further say that the supposed arrest, imprisonment, and grievances in said declaration mentioned are the same arrest, imprisonment, and detention herein set forth, and none other, without this, that these defendants violently forced the plaintiff within the State-prison at said Windsor, and confined him in a dark and loathsome cell, and then and there beat and bruised the plaintiff with fist and clubs, and insulted him, and when so confined in said cell and prison, for the purpose of extorting money from the plaintiff, wickedly and maliciously threatened the plaintiff that they would inflict, or cause to be
43 inflicted, greater injuries upon the plaintiff unless he would pay them a large sum of money; all which the defendants are ready to verify.

Wherefore they pray judgment, &c.

By B. F. FIFIELD, *Att'y.*

And for further plea in this behalf, by leave of court first had and obtained, these defendants say that said cause ought to be dismissed because, they say that at the time of the committing of the several alleged grievances in said declaration mentioned, and for a long time, to wit, one year before and after that time, a gigantic rebellion was in existence and on foot against the laws and Government of the United States, and the public safety was greatly jeopardized and imperiled; and these defendants further say that it then and there became necessary to raise, and in fact large bodies of soldiers were raised, in the Northern States, and more especially in the military district embracing the second Congressional district of Vermont, for the purpose of suppressing said
44 rebellion and insuring the public safety.

And these defendants further say that at the time of said supposed grievances in said declaration mentioned, and for a long time, to wit,

one year before and after that time, the defendant Henry was a military officer in the service of the United States, to wit, a provost-marshal, within and for the military district embracing said second Congressional district of Vermont, and the said Beckwith was during the same time an assistant provost-marshal in the same district, acting in aid of the said Henry in the performance of his duties as such provost-marshal.

And these defendants further say that, to wit, on the 20th day of Nov., A. D. 1864, to wit, at Newbury, in the county of Orange, and in the said military district of the second Congressional district of Vermont, the plaintiff then and there being charged with having been guilty of disloyal practices in aid of the then existing rebellion against the laws
45 and Government of the United States and with affording aid and comfort to the rebels against the authority of the United States, to wit, enticing soldiers to desert from the Army of the United States, to wit, at Woodstock, in the county of Windsor, in said military district of the second Congressional district of Vermont, to wit, on the 15th day of June, A. D. 1864, these defendants, as such military officers, and not otherwise, did arrest the plaintiff on the charges aforesaid.

And these defendants further say that, afterwards, to wit, on the same day, to wit, at Windsor, in the county of Windsor, in the military district aforesaid, they did deliver over the plaintiff to the keeper of the State-prison at said Windsor for safe custody, until he could be brought before the civil tribunals of the United States within and for the district of Vermont, on the charges aforesaid, where he was detained on the charges aforesaid until afterwards, to wit, on the 1st day of May, A. D. 1865, where, to wit, at Woodstock, in the county of Windsor,
46 the plaintiff was brought before Warren C. French, he then being a United States commissioner, within and for the judicial circuit of Vermont, and the plaintiff then and there being charged with the offences aforesaid, after a full hearing in the premises, was held to bail by said commissioner for his appearance before the United States circuit court, then next to be held at Windsor on the 4th Tuesday of July, A. D. 1865, to answer to the charges aforesaid, and to such things as might be then and there alleged against him, as by said commissioner's record will more fully appear.

And these defendants further say that at and from the time of said arrest up to the 4th Tuesday of July, A. D. 1865, there was no session of a United States circuit court, nor of a grand jury in attendance upon any United States court, within the district and circuit of Vermont.

And these defendants further say that in making such arrest, imprisonment, and detention, the defendant Henry acted in the military capacity of provost-marshal as aforesaid, and the said Beckwith
47 in aid of him, the said Henry, and not otherwise; and that the arrest, imprisonment, and detention of the plaintiff as aforesaid was made and done without unnecessary force and violence, under the authority and by the order of Abraham Lincoln, then President of the United States, whose order as Commander-in-Chief of the Armies of the United States, by the rules and regulations of the Army, these defendants were bound to obey.

And these defendants further say that the supposed arrest, imprisonment, and grievances in said declarations mentioned are the said arrest, imprisonment, and detention herein set forth, and none other; without this, that these defendants violently forced the plaintiff within the State-prison at said Windsor, and confined him within a dark and loathsome cell, and then and there beat and bruised the plaintiff with fist and clubs, and insulted him; and when so confined in said cell and prison,

for the purpose of extorting money from the plaintiff, wickedly and
48 maliciously threatened the plaintiff that they would inflict or cause to be inflicted greater injuries upon the plaintiff unless he would pay them a large sum of money; all which the defendants are ready to verify.

Wherefore they pray judgment, &c.

By B. F. FIFIELD, *Att'y.*

And thereupon the plaintiff filed a general demurrer to the pleas as amended.

And thereupon the case was submitted to the court on the demurrer to the pleas as amended, and upon the former argument.

And thereupon the court ordered that a certificate of division of opinion be filed in the words and figures following:

UNITED STATES OF AMERICA,
District of Vermont:

At a circuit court of the United States, begun and held at Rut-
49 land, for the district of Vermont, on the 3d day of October, A. D. 1871.

Present, Hon. Lewis B. Woodruff and Hon. David A. Smalley.

ANDREW J. BEAN
v.
GILMAN HENRY & DANIEL BECKWITH.

State of the pleadings.

This is an action for trespass and false imprisonment, and was originally brought to a State court, to wit, Orleans County court, in the State of Vermont, and was thence removed on petition of the defendants to the United States circuit court for the district of Vermont under the fifth section of an act of Congress entitled "An act relating to habeas corpus, and relating to judicial proceedings in certain cases," approved March 3d, 1863, the defendants being military officers of the United States, and the action being brought for an arrest and imprisonment
50 done by them during the rebellion, in 1864, under the authority of the President of the United States.

A copy of the declaration is hereto attached, and may be referred to.

The defendants, among other pleas, pleaded two special pleas, copies of which are hereto attached, and may be referred to, to each of which the plaintiff demurs generally, and the defendants join in demurrer.

This case coming on to be argued this term, it occurred as a question—

1st. Whether the first of said pleas, under all the facts therein set forth, is a bar to the action.

2d. Whether, under all the facts set forth in the second plea aforesaid, the action ought to be dismissed by force of the provisions of "An act to declare valid and conclusive certain proclamations of the President, and acts done in pursuance thereof, or of his orders, in the suppression of the late rebellion against the United States," approved March 2, 1867.

On which questions the opinion of the judges was opposed.

51 Whereupon, a motion of the plaintiff, by his counsel, that the points on which the disagreement hath happened may, during

the term, be stated under the direction of the judges, and certified under the seal of the court to the Supreme Court, to be finally decided, it is ordered that the foregoing state of the pleadings be certified according to the request of the plaintiff, by his counsel, and the law in that case made and provided.

L. B. WOODRUFF,
Circuit Judge.
D. A. SMALLEY, *Judge.*

And afterwards, and on the 24 day of November, 1871, said cause was certified to the Supreme Court of the United States in accordance with the foregoing order.

And afterwards, and at the October term, A. D. 1873, of said Supreme Court, said cause was remanded to this court for trial, the mandate of said Supreme Court being in the words and figures following:

52 UNITED STATES OF AMERICA, *ss:*

[L. S.] The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Vermont, greeting:

Whereas, lately, in the circuit court of the United States for the district of Vermont, before you, in a cause between Andrew J. Bean, plaintiff, and Daniel N. Beckwith and Gilman Henry, defendants, wherein the judges of the said circuit court were opposed in opinion on certain points or questions, which were certified under the seal of the said circuit court to the Supreme Court of the United States for its opinion, as, by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States agreeably to the act of Congress in such case made and provided,
53 fully and at large appears;

And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and seventy-three, the said cause came on to be heard before the said Supreme Court on the said transcript of record and on the points or questions on which the judges of the said circuit court were opposed in opinion, and which were certified to this court for its opinion, agreeably to the act of Congress in such case made and provided, and was argued by counsel:

On consideration whereof, it is the opinion of this court that the questions certified must be answered in the negative.

Whereupon it is now here ordered and adjudged by this court that it be so certified to the said circuit court, and the same is accordingly hereby certified 5th January, 1874.

You, therefore, are hereby commanded that such further pro-
54 ceedings be had in said cause as, according to right and justice, and the laws of the United States, ought to be had, the said certificate notwithstanding.

Witness the honorable Morrison R. Waite, Chief Justice of said Supreme Court, the twenty-fifth day of March, in the year of our Lord one thousand eight hundred and seventy-four.

Costs of clerk, ; attorneys, ; taxed by—
D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

(Endorsed:) No. 67. October term, 1873. Mandate. Supreme Court United States. Bean vs. Beckwith. Filed April 2d, 1874. B. B. Smalley, clerk.

55 And afterwards, and at the July term, A. D. 1874, said cause was again entered upon the docket of this court.

And afterwards, at said July term, A. D. 1874, said cause was continued to the October term, A. D. 1874, of this court.

And afterwards, and at said October term, A. D. 1874, said cause was continued to the February term, A. D. 1875, of this court.

And afterwards, and at said February term, A. D. 1875, said cause was continued to the May term, A. D. 1875, of this court.

And afterwards, and at said May term, A. D. 1875, the defendants' second plea and the replication thereto were withdrawn, and said cause continued to the October term, A. D. 1875, of this court.

56 And afterwards, and at said October term, A. D. 1875, of this court, said cause came on for trial before the honorable Nathaniel Shipman, district judge, and a jury, and after a full hearing in the premises, and arguments of counsel therein, a verdict was rendered for the plaintiff, which verdict is in the words and figures following:

In this cause the jury find that the defendants are guilty in manner and form, as the plaintiff in his declaration hath alleged, and therefore find for the plaintiff to recover the sum of fifteen thousand dollars as damages.

S. D. WILSON, *Foreman.*

And afterwards, on the 9th day of October, A. D. 1875, and during said October term, A. D. 1875, judgment was rendered for the plaintiff, on the verdict, for fifteen thousand dollars damages and costs taxed at four hundred six dollars and fifty cents.

57 And thereupon on said 9th day of October, A. 1875, the defendants filed exceptions to said judgment, which were allowed by the court in the words and figures following:

58 United States circuit court, district of Vermont, October term, 1875.

ANDREW J. BEAN
v.
DANIEL N. BECKWITH AND GILMAN HENRY.

Defendants' exceptions.

This was an action of trespass for false imprisonment, originally brought in the county court for the county of Orleans, in the State of Vermont, and afterwards removed to this court, upon petition of the defendants, pursuant to the acts of Congress in that behalf made and provided.

The declaration is referred to as a part of these exceptions. Plea, the general issue, and trial by jury at this term.

The plaintiff's evidence tended to show that on the 11th day of November, A. D. 1864, while on his return from a trip to Boston, to his home in Coaticook, in the Province of Quebec, he was arrested in a passenger-car, near Wells River, in the State of Vermont, by def't Beckwith, without any warrant or process of law, and taken from thence to Sutton, Vermont.

59 That Beckwith at first proposed to take plaintiff to S't Johnsbury jail, but afterwads decided to take him to his (Beckwith's) residence at Sutton, to which place he was then on his way, for the purpose of allowing plaintiff to see his father, who lived about fifteen miles from Sutton.

That said Beckwith kept the plaintiff there through the ensuing night, under charge of keepers; that the plaintiff's father, for whom the plaintiff sent after his arrival at Sutton, came there during the night, but Beckwith refused to allow the plaintiff to have an interview with his father except in his (Beckwith's) presence.

That on the following day defendant forcibly and against the will of the plaintiff took him, and by order of Gilman Henry, the other defendant, placed him in the State's prison at Windsor, Vermont, where he remained until on or about the 26th day of April, 1865, when he was admitted to bail and released from said imprisonment.

That during all that time he was locked up in the night-time, and for the first few days in the day time also, in a narrow and scantily fur-

60 nished cell being one of those in which convicts in the State's prison were confined at night; that after the first few days, he was allowed, upon his complaint of the coldness of the cell, in the day-time to spend the day in the shops where the convicts worked, but was required to go out and return to his cell when they did, and not at any time to be out of sight of a keeper, nor to go upon the corridors or in the yard for exercise; that the food offered him was the fare served to the convicts, and which he could not eat; and thenceforth he obtained his meals to be sent to him from the keepers' table by paying $3 per week, which he paid during the whole time.

The plaintiff's evidence further tended to show that he was informed, at or soon after the time of his arrest, by defendants that he was charged with being one of three persons who had received $800 of money paid for two men who had enlisted in the Army in June previous as substitutes, and had immediately deserted, as more particularly stated hereafter, and with being privy to their desertion.

That he was imprisoned on Saturday, and saw no one but the

61 keepers till the Monday following, when def't Henry came to see him; that Henry told him he could be discharged on payment of the $800 and $25 more for expenses; that the plaintiff protested his innocence and demanded a trial; that he was told by Henry he could not have a trial and could not get one, but that his case would be reported to Major Austine, at Brattleboro', ass't prov. marshal gen'l.

That plaintiff thereupon requested him to make immediate report, which he promised to do. That later in the same day, the plaintiff being in much distress of mind and anxiety to return to his family, and thinking perhaps the money might be paid under protest, telegraphed his father to come and bring $800, and sent word to Henry, by the messenger who took the dispatch, requesting him not to report the case till his father arrived, which he expected would be on the following day.

That his father arrived on the next day but one. That his father

had an interview with Henry, and said to him that neither he nor the plaintiff would pay a dollar, and requested him to report the case at once.

62 He was further told by both defendants, both at Sutton and after his confinement at Windsor, that if they could not hold him as privy to the desertion they should take him to Canada to be prosecuted there under the foreign-enlistment acts for enlisting the men, unless he paid over the money.

That from that time plaintiff constantly urged that his case should be reported, or that a trial should be given him, or that he be admitted to bail, and protested his innocence. And Henry repeatedly promised to report the case, but frequently told him and his father he could not get a trial, nor be admitted to bail, and that he would be discharged at any time on payment of the $825.

That on the 8th of December, the pl'ff, unable to learn than any report had been made, addressed to Maj. Austine, ass't. pro. mar. gen'l, the following letter:

Maj. AUSTINE:

DEAR SIR: I was arrested Nov. 11 for aiding and assisting soldiers to desert, p'r order of Capt. Henry, and taken to this place, and
63 the capt. made proposition of settlement to me by paying him a certain sum of money, which I decline to do, at the same time very much doubting his authority for settling a thing of the kind; & I demand a trial as soon as possible, and he told me that he would report the case promptly to you and has kept me anxiously waiting in close confinement since, and being deprived of being with my family and business matters at home.

And as I begin to doubt the capt's promptness, I take the liberty to enquire of you whether there has been a case of the kind reported to you. Will you be so kind as to inform me p'r return mail and much oblige?

Yours, in confidence,

A. J. BEAN.

WINDSOR, *Dec.* 8, 1864.

That this letter was on the 10th December transmitted by Maj. Austine to Henry, with the following endorsement:

"Referred to Capt. Gilman Henry to report upon the case. This paper to be returned."

The plaintiff also introduced in evidence the following letter,
64 which was admitted to have been written by def't Henry to Maj. Austine on the 21st of December, 1864:

Major WILLIAM AUSTINE, U. S. A.,
A. A. Provost-Marshal-General:

SIR: I have the honor to call your attention once more to the case of A. J. Bean, arrested and held for the payment of $800, part of the bounty-money of John Guptil and Eldon Brown.

Additional facts have been communicated to M'r Beckwith since my report of Dec. 13th, 1864, which were stated in another letter from me to you from this office yesterday. The person who furnished this information lives near Canada, and, with your permission, I should like to send him transportation, and have him come to these headquarters and put his statement in the form of an affidavit, and make oath to it.

I will be obliged to you if you will furnish this office with a copy of General Dix's order. The substance of it was communicated to me by Gen'l Pitcher, and he caused one arrest to me made by Captain House, and the money was refunded.

65 In relation to turning this case over to the district attorney, I will say that I do not think Bean could be convicted under sec. 24, or any other section of the enrolment act, from any testimony we now possess. The testimony of said Cleveland, the person who gave M'r Beckwith additional facts, may be enough to convict Bean.

In looking the case over from the facts in my possession, I am sure it comes within the order of Gen'l Dix, and if I am not mistaken in that order, I would respectfully suggest that Bean be turned over to Gen'l Dix, or the military authority, rather than to the district attorney, unless we can get additional facts that will be sure to convict him.

I am, very respectfully, your obedient servant,

GILMORE HENRY,
Capt. & Prov. Mar. 2d Dist. V't.

The plaintiff's evidence further tended to show that throughout his imprisonment he made constant efforts in various ways to obtain a trial or a release on bail, which he was able and willing to furnish; that his father made eleven journeys from the northern part of Vermont

66 to Windsor, Brattleboro', &c., for that purpose; that among other efforts he addressed to Maj. Gen. Dix, then in command of that dep't, the following letter:

WINDSOR STATE'S PRISON,
Jan'y 21st, 1865.

Maj. Gen. J. A. DIX:

SIR: I am told by one Daniel Beckwith, a deputy provost-marshal here, by whom I have been committed here on a charge (of which I am entirely innocent) of aiding or being privy to the escape of two substitutes who had received $800 paid them by one Stevens, and that you have ordered my imprisonment here till I pay the $800 and expenses.

If I am guilty of aiding a soldier to desert, I ought to be punished, and I cannot see, sir, how (I say it respectfully) you have any right to order my imprisonment for any indefinite time without giving me an opportunity to prove my innocence.

I ask nothing but what is right, and the right of every citizen of the United States; that is, a trial.

I do not believe, sir, that you have made any such orders, but the fact is I am kept in prison ever since Nov. 11, 1864, my family

67 suffering and my character defamed, and a trial denied me.

I am told, sir, there is a United States attorney in Vermont whose duty it is to investigate such matters, and I respectfully ask, sir, if the matter is within your jurisdiction, that he be directed to bring me to trial; and if the government is not ready for trial, I can find any number of respectable people who will become my bail until such time as the government is ready to try me.

Again, sir, I ask you candidly and respectfully to order a complaint to be made against me, and, if proved guilty, I must suffer the consequences.

Yours, respectfully,

ANDREW J. BEAN.

That said Bean obtained the intercession at Washington of M'r Baxter, a member of Congress from Vermont.

His evidence further tended to show that he learned early in April of an order for his release having been sent from Washington, and made, as did his father, urgent efforts to obtain his release, as his wife
68 was then about to be confined; that he did not succeed, though repeated applications were made to Henry, until the 26th of April, and after the confinement of his wife, when Henry brought him before a justice of the peace of Windsor, who took bail for his appearance before a U. S. commissioner when called on.

He further gave evidence, by the then U. S. dist. att'y of Vermont, to show that there were many other cases in Vermont during the war and about the time of the plaintiff's arrest of persons arrested by military authority, charged with inciting or assisting soldiers to desert. That all these, without exception, so far as he knew, were turned over to him as dist. att'y to be prosecuted, and were prosecuted before the civil courts.

That he knew nothing of the case till notified of it some time in April, 1865. That after he was notified, though he could not tell the precise date he proceeded promptly and without delay, and no delay in discharging the plaintiff was due to him. That there was some delay, though he could not remember what, or how, except that def't Henry objected to pl'ff being brought before M'r Sheafe, whom witness usually
69 employed as commissioner, because M'r Sheafe had been counsel for the plaintiff. That the witness had nothing to do with the discharge of the pl'ff on bail before the justice of the peace, and did not authorize or know of it. That he was notified that there would be a hearing on the 11th May, at Windsor, and attended as U. S. att'y. That he found M'r French had been procured to be appointed commissioner, and the pl'ff brought before him, and M'r Washburn, of Woodstock, was in attendance as counsel for the prosecution, and mainly conducted it. By whom M'r W. was employed, or who procured the appointment of M'r French as commissioner, the witness did not know. The pl'ff was bound up to appear before the U. S. court. The case was presented to the grand jury, and the def't Henry attended before them as a witness, but the grand jury found no bill against the pl'ff.

At the time of the appointment of M'r French as commissioner, there were two competent and capable U. S. commissioners at Brattleboro'.

70 The pl'ff further gave evidence tending to show that at the time of his arrest he was engaged in business as a harness-maker at Coaticook. That he had a shop with about $400 of stock; a house for which he had nearly paid, and 23 acres of land partly paid for. Also, two horses and about $500 of household furniture. That he was doing a fair business at his trade and in good credit.

That by his imprisonment, and the report in Coaticook that he was in State's prison, his business was destroyed, his personal property and furniture seized by creditors, and sacrificed at sheriff's sale at prices below its value, and the proceeds, to a great extent, consumed in cost; some of these suits being on just demands and others not. Also, that he expended about $600 in his various efforts for release, &c. That his wife was compelled to leave her home and return to her friends in V't

On cross-examination by defendants' counsel (no evidence on this point having been previously given by the plaintiff), he admitted that
71 he had been engaged in the business, to some extent, of furnishing substitutes for enlistment in the army. That he had made a contract with Brown (one of the deserters before mentioned) to come

and enlist. That he had accompanied Brown from Canada for that purpose, and that Guptil, the other deserter, and one Buckland and one Jewell came at the same time. That Buckland was interested with the plaintiff in the amount to be received for Brown. That they all came to Woodstock together, and he, Buckland, Brown, and Guptil occupied the same room together at the hotel. That they were all together when Brown and Guptil enlisted upon a contract with one Stevens to pay $600 cash for them as substitutes for two persons liable to draft.

That $200 for each man was paid by Stevens to the provost-marshal for the benefit of the men, and $100 was paid the plaintiffs as compensation for obtaining Brown, and $400 to Jewell for obtaining Guptil.

72 That at one o'clock of the same day on which the men enlisted, the pl'ff, Buckland, and Jewell took the train and returned to Canada.

Defendants' evidence tended to show that said Gilman Henry was provost-marshal of the second Congressional district of Vermont, duly appointed, commissioned, and sworn, pursuant to the act of Congress known as the "conscription act;" that from October, 1863, to the close of the war it was a part of his duty to enlist men for military service in the armies of the United States; that said Daniel N. Beckwith was an assistant provost-marshal, duly appointed, commissioned, and sworn, who was during all the period herein referred to subordinate to said Gilman Henry, and subject to his command.

The defendants testified that on or about the 14th day of June, 1864, the pl'ff, together with one Jewell and one Buckland, came to Woodstock, where the defendants' headquarters then were, accompanied by Eldon Brown and John Guptil, and proposed to, or through one J. C.

73 Stevens, to enlist said Brown and Guptil into the service of the United States as substitutes, and a contract was entered into by which said Stevens was to pay said pl'ff and his said associates six hundred dollars each for said Brown and Guptil. That said Brown and Guptil were examined, accepted, clothed in the uniform of soldiers, and paid by said Stevens $200 each, said Stevens paying to said Bean, Jewell, and Buckland the further sum of $800. Said Brown and Guptil were required to deposit their bounty with a clerk in the defendant's office as security for their departure to the rendesvous at New Haven, Conn., on the following evening, and that they did so deposit with said defendant Beckwith the whole of their said bounty; that during the day following their enlistment they each obtained $5 of their bounty-money, and on the same day deserted, and went to parts unknown. That on the day of their enlistment plaintiff and Jewell returned to Canada, taking with them the sum of $800, so paid them by said Stevens,

74 and also at the request of said Brown and Guptil taking away from Woodstock for the purpose of carrying the same to Canada the citizens' clothing of said Brown and Guptil.

Defendants' evidence further tended to show that from the circumstances and such information as they were able to obtain, they each and both of them believed that said enlistment and desertion was in pursuance of a preconceived plan for this purpose which was entered into by said five men previous to said enlistment, and that said two substitutes were aided and abetted in their desertion and escape by said plaintiff, Jewell, and Buckland.

The defendants' evidence further testified to show that at the time said Brown and Guptil enlisted and deserted as aforesaid, Brig. Gen'l Thomas G. Pitcher was the acting assistant provost-marshal-general for the State of Vermont, having his headquarters at Brattleboro'. That said Pitcher

remained in command until some time in the month of October fol-
75 lowing, when he was assigned to a command in the State of Indiana, and Major William Austine was appointed to the same command at Brattleboro' in his stead. That on the 23d day of June, 1864, General Pitcher was at Woodstock; said defendant testifies then and by his direction communicated to him all the facts and circumstances connected with the enlistment and desertion of said Guptil and Brown which had then come to their knowledge. That thereupon said General Pitcher ordered defendant Henry, by parole, to furnish said Beckwith with transportation, and proceed to the northern border of the State of Vermont, and arrest and bring to his headquarters at said Brattleboro' said deserters and said plaintiff, Jewell, and Buckland, or any or either of them.

Said Beckwith received from said Henry a written order to take transportation and arrest any of said five persons and bring them to the headquarters of said Henry or said Pitcher, and took his departure.

76 Beckwith testified that he failed to find any of the persons he was thus ordered to arrest, but kept the written order aforesaid in his pocket until said 11th day of November, 1864, when he found said plaintiff on board the cars at said Wells River, and there arrested him, at the same time informing him that he had no warrant but was acting under a military order, and that the charge upon which he was arrested was for aiding and abetting said Brown and Guptil to desert, after their said enlistment as aforesaid, and that no more force was used than was necessary to accomplish the arrest of plaintiff, who was in all respects treated by him, the said Beckwith, gentlemanly and humanely. That the plaintiff was brought on the day after the arrest to the headquarters of Capt. Henry, at Windsor, Vermont, and was by order of Capt. Henry immediately confined in the State's prison at Windsor, which was the usual place of confinement for persons charged with offences against the military law, such persons being principally
77 deserters, and the only convenient and safe place in the vicinity, and that plaintiff was in all respects, save in being deprived of his liberty, well and humanely treated while so in said prison.

Defendant Beckwith's evidence tended to show that in all he did in regard to the arrest and imprisonment of plaintiff he acted under the command of Captain Gilman Henry, the other defendant, and in good faith. And defendant Henry's evidence tended to show that in all he did in regard to the arrest of said plaintiff, and his subsequent detention in prison, he did in good faith and in obedience to those orders of his superior officers which are in this bill of exceptions stated.

Defendant Henry's evidence also tended to show that he informed plaintiff that he was arrested for aiding in the desertion of said Guptil and Brown, immediately upon his being confined in said State's prison, and that he further informed said plaintiff that he could be discharged on refunding to the government the eight hundred dollars paid to
78 said plaintiff, Jewell, and Buckland by said Stevens. That he refrained to make a full report of the case to Major Austine, his superior officer, at the request of said plaintiff, until the 13th day of December following, and that from time to time he communicated to said plaintiff all orders in regard to the case as soon as he received them from his superior officers. And immediately upon receiving the order to turn plaintiff over to the civil authorities, he informed the United States district attorney for the district of Vermont of such order and invited his attention to the case.

The defendants offered in evidence a duplicate copy of the official re-

port of said Henry to Major Austine, dated December 13th, 1864, hereto annexed, and marked "Exhibit No. 1." And also an additional report or statement from said Henry to said Austine, dated December 20, 1864, hereto annexed and marked "Exhibit 2," for the purpose of proving by the reports that the facts therein stated were true.

To the admission of these documents the plaintiff objected. The
79 court permitted the defendants to prove that said Henry made and transmitted to his superior officer, in the due and regular course of business, full reports of what had been learned in regard to said Bean, but refused to allow said reports to be admitted as evidence of the truth of the statement which are there narrated.

The defendants further offered in evidence, as a whole, the deposition of George W. Kinney, hereto annexed, marked "No. 3, Defendants' Exhibit," to which the plaintiff objected, not for form, but for substance.

The defendants further offered in evidence, as a whole, the deposition of Eldon Brown, hereto annexed, marked "Exhibit No. 4," to which the plaintiff objected, not for any defect in form, but because its substance was not competent evidence.

The defendants further offered in evidence, as a whole, the deposition of Benjamin F. Jewell, hereto annexed, marked "Defendants' Ex-
80 hibit No. 5," to which the plaintiff objected, not for any defect in form, but because its substance was not competent evidence.

The court sustained the plaintiff's objection in regard to said three depositions and excluded the same, to which three rulings the defendants excepted. No motion was or had been made to suppress said depositions, or any of them, or any part thereof prior to the trial, or any notice that objections would be made thereto or any part thereof.

Each and every of the foregoing exceptions were allowed and admitted by the court during the trial.

The said three depositions were offered for the purpose of satisfying the jury of the guilt of said Bean by evidence which was not known to or did not come to the knowledge of the defendants prior to said release.

The court excluded said depositions upon the ground that the guilt or innocence of said Bean was not a question for the determination of the jury, but that all the facts and circumstances which were knownt to
81 the defendants, or with which they in any way became acquainted prior to the imprisonment, could be admitted for the purpose of rebutting malice and showing that they acted in good faith, but that they could not give in evidence circumstances of which they had never heard until after the commencement of this suit.

These said depositions were objected to upon the ground that no part of them was admissable, but that if any part contained any admissable evidence it was so intermingled with inadmissable statements that the whole became inadmissable.

The defendants further gave in evidence, subject to the plaintiff's objection, reserving all exceptions to its legal effect, the facts stated and set forth in the following stipulation, signed by the attorneys of the parties:

United States circuit court, district of Vermont.

ANDREW J. BEAN
v.
GILMAN HENRY & DAN'L N. BECKWITH.

It is hereby stipulated that the following facts, so far as the
82 same are legally admissable, shall be admitted as evidence on the

trial of the above-entitled cause, including this and the eight following pages:

1. That Maj. Gen. John A. Dix was, from the first day of January, A. D. 1864, until the first day of July, A. D. 1865, the military commander of the Department of the East, duly appointed and commissioned by Abraham Lincoln, then President of the United States, and that Major D. T. Van Buren, Major Charles C. Joline, and Capt. E. W. Hooper were, at the several dates hereinafter named, members of the staff of said Maj. Gen. Dix, and duly authorized to affix his official signature to the several orders and papers hereinafter referred to.

2. That the State of Vermont was, by order of the President of the United States, a part of the military "Department of the East," and that Maj. William Austine and Capt. Gilman Henry and Capt. Daniel N. Beckwith were subordinate officers of the said Major-Gen. Dix,
83 and subject to his authority and command, the said William Austine being A. A. provost-marshal-general of the State of Vermont, Capt. Gilman Henry then being provost-marshal of the second Congressional district of Vermont, and Captain Daniel N. Beckwith being the assistant provost-marshal of said district.

3. That on the 3d day of January, 1865, an order or communication, of which the following is a true copy, by command of Maj. Gen. Dix, *and* transmitted to Maj. William Austine:

HEADQUARTERS DEPARTMENT OF THE EAST,
New York City, Jan'y 3d, 1865.

Major WILLIAM AUSTINE,
A. A. Prov. Mar. General, Brattleboro', V't:

MAJOR: In reply to your letter of the 27th ult., in reference to the case of one Andrew J. Bean, now in confinement at Windsor, V't, I transmit herewith a copy of the only letter known to have been written to your predecessor, Gen. Pitcher, upon a similar subject. It will be seen that in the case referred to in the letter to Gen. Pitcher the
84 money taken was bounty. While the commanding general has invariably interfered to recover money of this kind taken from recruits because it was due to them by law (national, State, or local), he has regarded substitute-money as a matter of private bargain, with which generally he ought not to interfere.

The case of Bean and his confederates, however, is one of gross fraud upon the government, and you are authorized to collect from them, either individually or collectively, the amount received by them, $800, to take all necessary steps for the arrest of the parties now at large, and to keep them in custody until the money and expenses of their arrest is paid. If Bean or either of them will pay over the money, they can be discharged.

When collected, the $800 with the $400 left with the clerk will be paid over to some disbursing officer of U. S. (paymaster or otherwise), and his receipt, with proper explanation, will be forwarded to the Adjutant-General of the U. S. Army.

By command of Maj. Gen. Dix.

CHARLES C. JOLINE,
Major & A. D. C.

85 The papers forwarded by you are herewith returned.

4. That on the 21st day of January, 1865, pl'ffs, Andrew J. Bean, addressed a letter to Maj. Gen. Dix, of which the following is a copy:

WINDSOR STATES PRISON,
Jan'y 21, 1865.

Maj. Gen. J. A. DIX:

SIR: I am told by one Daniel Beckwith, a deputy provost-marshal here, by whom I have been committed here on a charge (of which I am entirely innocent) of aiding or being privy to the escape of two substitutes who had received $800, paid them by one Stevens, and that you have ordered my imprisonment here till I pay the $800 and expenses. If I am guilty of aiding a soldier to desert I ought to be punished, and I cannot see, sir, how (I say it respectfully) you have any right to order my imprisonment for any indefinite time without giving me an opportunity to prove my innocence.

I ask nothing but what is right and the right of every citizen of the United States, that is, a trial.

86 I do not believe, sir, that you have made any such orders, but the fact is, I am kept in prison ever since Nov. 11th, 1864, my family suffering and my character defamed and a trial denied me. I am told, sir, there is a United States attorney in Vermont whose duty it is to investigate such matters, and I respectfully ask, sir, if the matter is within your jurisdiction, that he be directed to bring me to trial, and if the government is not ready for trial, I can find any number of respectable people who will become my bail until such time as the government is ready to try me.

Again, sir, I ask you candidly and respectfully to order a complaint to be made against me, and if proved guilty, I must suffer the consequences.

Very respectfully,

ANDREW J. BEAN.

This letter was sent to Maj. Austine from Gen. Dix' headquarters, with the following endorsement:

HEADQU. DEP'T OF THE EAST,
N. Y. City, Jan'y 24, '65.

Respectfully referred to Major Austine, U. S. A., A. A. P.
87 M. G., Brattleboro', V't, and attention invited to it in connection with instructions relative to same case from these h'dqu. of January 3d, 1865. Major Austine will cause Bean to be distinctly informed that he was arrested by orders from these h'dquar. Also, of the conditions upon which he can obtain discharge.

By command of Maj. Gen. Dix.

E. W. HOOPER,
Capt. & A. D. C.

5. That on the 24th of Feb'y, 1865, Maj. William Austine forwarded to the headquarters of Gen. Dix a communication of which the following is a copy. This communication, with enclosures, was returned to Major Austine with sundry endorsements, of which the following are copies:

A.

OFFICE OF A. A. PROVOST-MARSHAL-GENERAL,
Brattleboro', V't, Feb'y 24, 1865.

COL.: I have the honor to forward the papers in the case of Andrew

trial of the above-entitled cause, including this and the eight following pages:

1. That Maj. Gen. John A. Dix was, from the first day of January, A. D. 1864, until the first day of July, A. D. 1865, the military commander of the Department of the East, duly appointed and commissioned by Abraham Lincoln, then President of the United States, and that Major D. T. Van Buren, Major Charles C. Joline, and Capt. E. W. Hooper were, at the several dates hereinafter named, members of the staff of said Maj. Gen. Dix, and duly authorized to affix his official signature to the several orders and papers hereinafter referred to.

2. That the State of Vermont was, by order of the President of the United States, a part of the military "Department of the East," and that Maj. William Austine and Capt. Gilman Henry and Capt. Daniel N. Beckwith were subordinate officers of the said Major-Gen. Dix,
83 and subject to his authority and command, the said William Austine being A. A. provost-marshal-general of the State of Vermont, Capt. Gilman Henry then being provost-marshal of the second Congressional district of Vermont, and Captain Daniel N. Beckwith being the assistant provost-marshal of said district.

3. That on the 3d day of January, 1865, an order or communication, of which the following is a true copy, by command of Maj. Gen. Dix, *and* transmitted to Maj. William Austine:

HEADQUARTERS DEPARTMENT OF THE EAST,
New York City, Jan'y 3d, 1865.

Major WILLIAM AUSTINE,
A. A. Prov. Mar. General, Brattleboro', V't:

MAJOR: In reply to your letter of the 27th ult., in reference to the case of one Andrew J. Bean, now in confinement at Windsor, V't, I transmit herewith a copy of the only letter known to have been written to your predecessor, Gen. Pitcher, upon a similar subject. It will be seen that in the case referred to in the letter to Gen. Pitcher the
84 money taken was bounty. While the commanding general has invariably interfered to recover money of this kind taken from recruits because it was due to them by law (national, State, or local), he has regarded substitute-money as a matter of private bargain, with which generally he ought not to interfere.

The case of Bean and his confederates, however, is one of gross fraud upon the government, and you are authorized to collect from them, either individually or collectively, the amount received by them, $800, to take all necessary steps for the arrest of the parties now at large, and to keep them in custody until the money and expenses of their arrest is paid. If Bean or either of them will pay over the money, they can be discharged.

When collected, the $800 with the $400 left with the clerk will be paid over to some disbursing officer of U. S. (paymaster or otherwise), and his receipt, with proper explanation, will be forwarded to the Adjutant-General of the U. S. Army.

By command of Maj. Gen. Dix.

CHARLES C. JOLINE,
Major & A. D. C.

85 The papers forwarded by you are herewith returned.

4. That on the 21st day of January, 1865, pl'ffs, Andrew J. Bean, addressed a letter to Maj. Gen. Dix, of which the following is a copy:

WINDSOR STATES PRISON,
Jan'y 21, 1865.

Maj. Gen. J. A. DIX:

SIR: I am told by one Daniel Beckwith, a deputy provost-marshal here, by whom I have been committed here on a charge (of which I am entirely innocent) of aiding or being privy to the escape of two substitutes who had received $800, paid them by one Stevens, and that you have ordered my imprisonment here till I pay the $800 and expenses. If I am guilty of aiding a soldier to desert I ought to be punished, and I cannot see, sir, how (I say it respectfully) you have any right to order my imprisonment for any indefinite time without giving me an opportunity to prove my innocence.

I ask nothing but what is right and the right of every citizen of the United States, that is, a trial.

86 I do not believe, sir, that you have made any such orders, but the fact is, I am kept in prison ever since Nov. 11th, 1864, my family suffering and my character defamed and a trial denied me. I am told, sir, there is a United States attorney in Vermont whose duty it is to investigate such matters, and I respectfully ask, sir, if the matter is within your jurisdiction, that he be directed to bring me to trial, and if the government is not ready for trial, I can find any number of respectable people who will become my bail until such time as the government is ready to try me.

Again, sir, I ask you candidly and respectfully to order a complaint to be made against me, and if proved guilty, I must suffer the consequences.

Very respectfully,

ANDREW J. BEAN.

This letter was sent to Maj. Austine from Gen. Dix' headquarters, with the following endorsement:

HEADQU. DEP'T OF THE EAST,
N. Y. City, Jan'y 24, '65.

Respectfully referred to Major Austine, U. S. A., A. A. P.
87 M. G., Brattleboro', V't, and attention invited to it in connection with instructions relative to same case from these h'dqu. of January 3d, 1865. Major Austine will cause Bean to be distinctly informed that he was arrested by orders from these h'dquar. Also, of the conditions upon which he can obtain discharge.

By command of Maj. Gen. Dix.

E. W. HOOPER,
Capt. & A. D. C.

5. That on the 24th of Feb'y, 1865, Maj. William Austine forwarded to the headquarters of Gen. Dix a communication of which the following is a copy. This communication, with enclosures, was returned to Major Austine with sundry endorsements, of which the following are copies:

A.

OFFICE OF A. A. PROVOST-MARSHAL-GENERAL,
Brattleboro', V't, Feb'y 24, 1865.

COL.: I have the honor to forward the papers in the case of Andrew

J. Bean, now confined at Windsor, V't, charged with being accessory in defrauding the government in placing substitutes in the service who deserted immediately after muster. After the decision of Maj. Gen. Dix to keep him in confinement until he had refunded the amount
88 his party received, his father made an appeal to Hon. M'r Baxter, M. C., at Washington, which letter, with endorsements, was referred to Capt. Henry, pro. mar. 3d dist., with orders (see endorsements). The report of the board of enrolment is now submitted for the final orders of Maj. Gen. Dix.

I am, col., very respectfully, your ob't serv't,

W. AUSTINE,
Maj. U. S. A., A. A. P. M. Gen.

B.

This letter is endorsed as follows:

It is stipulated that the signature upon the original endorsement is in the handwriting of Maj. Gen. John A. Dix, and that the paper marked "E," mentioned in said endorsement, is the order hereinbefore recited, dated Jan'y 3d, 1865, and signed by

By command of Maj. General Dix.

CHARLES C. JOLINE,
Maj. & A. D. C.

H'DQ'RS DEP'T OF THE EAST,
New York, 2d March, 1865.

Respectfully forwarded to the Adjutant-General U. S. A. It will be seen by the paper (marked "E") herewith that Bean is held by my order for complicity in a gross fraud against the U. S.

JOHN A. DIX,
Maj. Gen'l.

C.

Respectfully referred to the Judge-Advocate-General, A. G. O., March 7, '65.

E. D. TOWNSHEND,
As't Adj't General.

D.

WAR DEPARTMENT,
BUREAU OF MIL. JUSTICE, *M'ch* 20, 1865.

Respectfully returned to the Adjutant-General. It appears that Andrew J. Bean, citizen of Vermont, is confined at Windsor, in that State, by order of Maj. Gen. Dix, commanding Dep't. of the East,
89 upon charges of complicity with two others, and two substitutes, the latter of whom deserted immediately after enlisting. It seems the five disappeared together, and it is alleged that they all escaped to Canada, where the proceeds of the operation was divided, the substitutes being entitled to $1,200 ($600 each), of which the runners got $800. Bean admits receiving $135 as his share. Gen. Dix ordered his detention in custody until he should pay over the $800. He offered to refund $135. It is the opinion of this bureau that if Bean can be shown to have assisted the substitutes in their escape he should be tried

therefor. As the prisoner has been confined since Nov. 11th, 1864, it is advised that the case be disposed of without delay.

J. HOLT,
Judge-Advocate-General.

E.

Respectfully submitted to the Secretary of War, with the report of the Judge-Advocate-General in the case.
A. G. O., Mar. 23d, '65.

W. A. NICHOLS,
As't Adj't Gen'l.

F.

WAR DEPARTMENT,
PROVOST-MARSHAL-GENERAL'S BUREAU,
Washington, D. C., March 27, 1865.

Respectfully returned to the Hon. C. A. Dana, Assistant Secretary of War. I know of no reason why the within-named Andrew
90 J. Bean should not be turned over to the civil authorities for trial.

JAMES B. FRY,
Provost-Mar. Gen'l.

G.

WAR DEPARTMENT,
March 28, 1865.

Respectfully returned to Maj. Gen. Dix, with directions to turn this man over to the civil authorities for trial.
By order of the Secretary of War.

JA'S A. HARDEE,
Insp'r Gen. U. S. A.

H.

H'DQU'RS DEP'T OF THE EAST,
New York, 5 *Ap'l*, 1865.

Respectfully referred to Maj. W. Austine, U. S. A., acting ass't pro. mar. gen., Brattleboro', V't, whose attention is called to the accompanying endorsements of the War Dep't, dated 28 March, 1865.
By command of Maj. Gen. Dix.

CHA'S C. JOLINE,
Maj. & A. D. C.

Signed by the attorneys of the respective parties at White River Junction, May 12, 1875.

CHA'S N. DAVENPORT,
Att'y for Henry & Beckwith.
N. T. SHEAFE,
Att'y for Pl'ff.

The defendants, in connection with the order from Maj. Gen'l Dix, dated January 3d, 1865, offered in evidence a copy of the
91 letter to General Pitcher, therein referred to. Said letter is as follows:

NEWPORT, *March 11th*, 1864.

Brig. Gen'l T. G. PITCHER,
Sup't Vol's, Brattleboro':

GENERAL: I am directed by the commanding general to acknowledge receipt of your letter of the 9th, charging one William Britton with defrauding Ja's Lathrop, of Co. F, 1st V't Cav., out of $135, a part of his bounty-money. You will at once arrest Britton and require him to refund to you the whole amount of $135, and in default of his so refunding you will send him under guard to these headquarters. If sent here he will be imprisoned in Fort Lafayette until the amount is paid. You are to totally disregard any plea that the money was paid him under contract. Such a payment is without adequate consideration, and is considered fraudulent and void.

You are authorized to take similar action in any other case brought to your knowledge.

By command of Maj. Gen. Dix.

CHA'S C. JOLINE.
Maj. & A. D. C.

92 Def't Henry's evidence tended to show that immediately upon receipt of said order of January 3d, 1865, he gave to said plaintiff the following letter:

PROVOST-MARSHAL'S OFFICE,
SECOND CONGRESSIONAL DISTRICT OF VERMONT,
Windsor, Jan'y 6th, 1865.

M'r ANDREW J. BEAN:

SIR: I have received a communication from Gen. Dix, through Maj. W. Austine, U. S. A., in which he directs the collection of the $800, either individually or collectively, from the persons engaged in the transaction of enlisting John Guptil and Eldon Brown; to take all necessary steps to arrest the parties now at and to keep them in custody until the money and the expenses of their arrest is paid. He says if Bean, or either of them, will pay over the money, they can be discharged.

Very respectfully, your ob't serv't,

GILMAN HENRY,
Capt. & Pro. Mar. 2d Dist. V't.

Defendant Henry's evidence further tended to show that it was his duty to make tri-monthly reports to the Provost-Marshal-Gen'l at Washington, which he did through the provost-mar-hal's office at Brat-
93 tleboro'. That, on the 20th day of November, 1864, he made a report for the ten preceding days, which contained the following paragraph:

"III. One person arrested (Andrew J. Bean), charged with taking a part of the money paid for two substitutes enlisted at this office, and then being privy to their desertion, and is held for the return of the money, eight hundred dollars."

Defendant Henry's evidence further tended to show that on the 16th day of December, 1864, he informed the pl'ff in writing of the charges upon which he was imprisoned. The information was conveyed in a letter of which the following is a copy:

WINDSOR, *Dec. 16th*, 1864.

M'r ANDREW J. BEAN:

SIR: I am directed by Major W. Austine, United States acting assist

ant provost-marshal-general, to furnish you with a full copy of the charges against you. This I did verbally at the first time I saw you after your arrest, November 14th, 1864.

CHARGES.—On the 15th day of June, 1864, you came to the headquarters in this district, with two runners or brokers, named Buckland and Jewell, and brought with you two men who said their names were John Guptil and Elden Brown, and they were enlisted as substitutes. Buckland and Jewell, the two substitutes, and yourself disappeared with
$800 of the money paid by the principals, and all went to Canada,
94 and it is charged that you aided the substitutes in their escape, or was privy to it, and appropriated part or the whole of the $800 thus obtained to your use. And it is claimed that you shall pay for the use of the government the $800 with the expense of your arrest.

GILMAN HENRY,
Captain and Provost-Marshal of the Second District of Vermont.

The defendants gave no other or further evidence, either oral or written, of any other orders from the President of the United States, or their superior officers, than is hereinbefore detailed, nor was any evidence offered by pl'ff tending to controvert the evidence of defendants in respect to said orders.

The defendants and General Pitcher were examined as witnesses, and did not claim that said orders were issued by, known to, or approved by the President, and no question was asked upon said subject by either side.

The plaintiff in reply testified that it was not true, as testified by the defendants, that the clothes of either Guptil or Brown were delivered to or received by him.

It sufficiently appeared that at the time of the arrest and imprisonment, no rebellion existed in the State of Vermont against the
95 Government of the United States, and no military operations were being carried on within its limits. The courts of justice were open and in the undisputed exercise of their regular jurisdiction.

The plaintiff was not and never had been in the military service of the United States, or in any way connected with that service.

Defendant's counsel, after the evidence was closed, filed the following motion, and claimed and insisted that under the acts of Congress of March 3d, 1863, and March 2d, 1867, upon the evidence hereinbefore detailed, they were fully justified for the acts complained of.

Copy of motion to dismiss.

Circuit court, district of Vermont, Oct. term, 1875.

ANDREW J. BEAN
v.
GILMAN HENRY & DANIEL N. BECKWITH.

And, now, after the evidence in said cause has all been introduced, the said defendants claim that all the facts proved establish that the act, done by them for which the pl'ff claims to recover were done
96 by them as military officers acting under the authority of orders of the President of the United States, during the existence of the late rebellion against the United States, and that by law upon the facts proved the said defendants are entitled to have the said cause dismissed by the court, and they therefore pray that the same may be dismissed.

By C. N. DAVENPORT.
S. P. POLAND.

The court overruled said motion to dismiss and ordered the trial to proceed, to which the defendants excepted.

Counsel for defendants thereupon requested the court to hold and charge the jury that the facts which the defendants' evidence tended to show, if believed by the jury, constituted under the aforesaid acts of Congress a full and complete justification for such, and both the defendants, for the acts complained of. And in the absence of all evidence to prove whether the President issued any order, general or special, for the arrest and detention of the plaintiff, the jury were not only at liberty but were bound to presume that he did; that
97 such was the presumption of law, under the act of March 2d, 1867, and that such presumption must prevail in this case, as there is no evidence to rebut it.

The court declined to hold and charge as requested, but did charge the jury as follows:

GENTLEMEN OF THE JURY: This is an action of trespass for an alleged assault and battery, and for false imprisonment, brought by Andrew J. Bean, of Manchester, in the State of New Hampshire, against Daniel N. Beckwith and Gilman Henry, both of whom, when the suit was brought, were citizens of this State. The facts in the case which are not controverted are as follows: In June, 1864, the plaintiff was a resident of Coaticoke, in the Province of Canada. M'r Henry was a provost-marshal and M'r Beckwith was a deputy provost-marshal for the second Congressional district of this State. Two persons, named John Guptill and Elden Browne, came from Canada on June 14th, 1864, for the purpose of enlisting as substitutes into the Army of the United States, and were accompanied by the plaintiff and one Buckland and Jewell. The plaintiff acted at the time as the broker or party who made the contract between Brown and the person for whom he was to serve as substitute, and for the services rendered in such brokerage capacity, the plaintiff was to obtain $400 of the $600 which Brown received. Buckland and Jewell, one or both, were brokers for Guptill. The two substitutes were duly enlisted into the service of the United States in the second Congressional district by M'r Beckwith, under direction of M'r Henry, and $400 of the money belonging to them was left in the custody of M'r Beckwith. In addition to this $400, the principals agreed to pay, and did pay it, into the hands of the two brokers, the sum of $800, as the residue of the contract-price, for which the substitutes agreed to enlist. Of this money, $400 was received by the plaintiff, who returned to Canada on the same or following day. On the night of June 15th the two enlisted men deserted and never returned. The two defendants, from the circumstances of the case, entertained the opinion that the enlistment and the desertion was a preconcerted plan upon the part of the five men who came from Canada, and that Bean, Buckland, and Jewell, were at least privy to the escape of the enlisted men, if they did not aid them in their desertion, and that the receipt of the $800 was a fraud upon the principals and the United States Government. M'r Henry thereupon, as he states, by verbal direction of Gen. T. J. Pitcher, issued a written order to M'r Beckwith to take transportation, arrest the five men, if they could be found, and upon their arrest to bring them to the headquarters of Capt. Henry, or to the headquarters of Gen. Pitcher, at Brattleboro. This written order cannot now be found, having been sent to Washington. The plaintiff does not admit that any written order was ever given, but it is not material whether the order was verbal or written. M'r Beckwith made a search for two or three

days without success. The active search was abandoned until November 11, 1864, when he accidentally met Bean in the cars at Wells River Junction, and arrested him by virtue of the order which has been mentioned. He took him to his home in Sutton, the next day carried him to Windsor, the headquarters of Henry, who ordered him confined in the State prison at that place. The reasons and the fact of the arrest were communicated in writing, through Major Austine, the successor of Gen. Pitcher, on November 20th, by Captain Henry, in his report, in the following words: "Arrested A. J. Bean, charged with having taken a part of the money paid for two substitutes, and then being privy to their desert'on, and is held for the return of the money."

Capt. Henry made further full report to Major Austine on December 13th, 1864, or thereabouts. Bean was kept confined at night in an ordinary cell in the State prison, and was kept under constant surveillance during the day-time. He frequently solicited a trial, and finally wrote to the commanding officer of the Department of the East, who communicated a reply through Major Austine, approving of the arrest and informing Bean that he could be released upon the payment of $800.

During the interviews of Capt. Henry with Bean in the prison, he was constantly informed that upon the payment of this sum and the expenses of his arrest he could be discharged. Finally, on or about March 2d, 1865, the fact and the cause of Bean's detention were brought officially to the authorities at Washington, who, on April 5, 1865, ordered him to be turned over to the civil authorities of Vermont. On April 26, he was released on bail, having been in confinement since Nov. 11, 1864. He was subsequently bound over for trial by a United States commissioner, but if the matter ever came before a grand jury, a true bill was not found.

At the time of the arrest no rebellion existed in the State of Vermont against the Government of the United States, and no military operations were being carried on within its limits. The courts of justice were open and in the undisturbed exercise of their regular jurisdiction. The plaintiff was not, and never had been in the military service of the United States, or in any way connected with that service. No charges in writing were made against Bean until Dec. 15th, when he was informed in writing by Capt. Henry of the charges made against him, which letter is in the following words:

WINDSOR, *Dec.* 16, 1864.

M'R ANDREW J. BEAN:

SIR: I am directed by Major W. Austine, United States acting assistant provost-marshal-general to furnish you with a full copy of the charges against you. This I did verbally at the first time I saw you after your arrest, November 14, 1874. Charges: On the 15th day of June, 1864, you came to the headquarters in this district with two runners or brokers, named Buckland and Jewell, and brought with you two men, who said their names were John Guptill and Elden Brown, and they were enlisted as substitutes. Buckland and Jewell, the two sub-
98 stitutes, and yourself disappeared with $800 of the money paid by the principals, and all went to Canada, and it is charged that you aided the substitutes in their escape, or was privy to it, and appropriated part or the whole of the $800 thus obtained to your own use, and it is claimed that you shall pay for the use of the government the $800, with the expenses of your arrest.

GILMAN HENRY,
Captain and Provost-Marshal of the Second District of Vermont.

No charges under oath were made against Bean until after his release on bail.

For the arrest and detention in State prison Bean brings an action against Henry and Beckwith, demanding large damages. You will thus perceive that this case is an important one to the parties and to the public. The principles of law applicable to the case are simple and elementary in their character, though their importance cannot be overestimated. I shall endeavor to state these principles with such brevity and plainness that they may be readily comprehended. I shall first consider these principles apart from the statutes which have been referred to, and as though they did not exist.

This government is one of law, and of law enacted or declared in accordance with a written constitution. Nobody can be legally arrested or imprisoned except it be in accordance with known and established principles of law of some kind. Three kind or classes of law in regard to the administration of criminal justice, are recognized in the Constitution of the United States—military law, martial law, and the law under which civil courts ordinarily act, which, for want of a better term, I shall denominate the common law—military law is only applicable to persons in the Army or Navy of the United States, or in the militia when in actual service in time of war or public danger. "The discipline necessary to the efficiency of the Army and Navy required other and swifter modes of trial than are furnished by the common law courts, and in pursuance of the power conferred by the Constitution, Congress has declared the kinds of trial and the manner in which they shall be conducted for offenses committed while the party is in the military or naval service. Every one connected with these branches of the public service is amenable to the jurisdiction which Congress has created for their government." (United States vs. Milligan, 4th Wallace 2d.) No other persons, citizens of the States where the courts are open, are amenable to military law, which is administered by courts called courts-martial. To take a simple illustration. Guptil and Brown were soldiers of the Army of the United States and were deserters. They were liable to arrest and to trial by military law. The order for their arrest was a valid order, and if they had been arrested they could properly have been tried and sentenced by a military court. Martial law is a system of rules and regulations proclaimed by military authorities and enforced by military power in a country or portion of a country which is in a state of actual war and is held by force of arms, where the civil courts are closed and there are no existing civil tribunals for the preservation of order. Martial law, in such a case and for the time being, exists from necessity, but "never exists when the courts are open and in the proper and unmolested exercise of their jurisdiction. It is also confined to the locality of actual war."

The remaining kind of law is the law under which civil courts act, and is that system of legal proceedings which has been established for the protection of private rights of persons, and which, in this part of the country, is derived from the common law of England as modified by the statutes of States and the decisions of civil courts.

Martial law did not exist in this State in 1864 and 1865. M'r Bean was not a member of the Army and was not subject to military law. He was subject to imprisonment only in accordance with the rules of common law. One of these rules, which is expressly embodied in the Constitution, is, that no person shall be deprived of liberty without due process of law. Not to dwell upon the abstract question as to what due process of law is, but confining myself to the circumstances of this case,

it is sufficient for me to say that due process of law is not the arrest and imprisonment, by mere military order, of a citizen for an offence cognizable by civil courts in a State which is at peace, and that such an order to arrest and confine in jail a citizen of a State not in rebellion is an illegal order and not a justification of any officer who acts under it. An illegal or void warrant is no justification for the acts of any person who executes such void warrant. The person who executes an illegal order is justly visited with the consequences of his act.

It follows then that, apart from the statutes, neither of the defendants had any right to imprison the plaintiff. But the defendants say that, admitting these maxims to be true, they are fully and completely justified by two statutes of the United States, one of March 2, 1863, and one of March 2, 1867. The last act is an enlargement of the former, and is substantially as follows:

"All acts, orders, and proclamations of the President of the United States, or acts done by his authority and his approval, between the 4th of March, 1861, and the 1st of July, 1866, respecting the arrest, imprisonment, and trial of persons charged with participation in the late rebellion, or as guilty of any disloyal practice in aid thereof, and all arrests and imprisonments made in the premises by any person by the authority of the orders or proclamations of the President made as aforesaid, or in aid thereof, are hereby approved in all respects, legalized, and made valid. Nor shall any person be held to answer in any of the said courts for any act done or omitted to be done in pursuance or in aid of any of said proclamations or orders, or by authority or with the approval of the President, within the period aforesaid, and all officers and other persons in the service of the United States, or who acted in aid thereof, acting in the premises shall be held prima facie to have been authorized by the President."

It is earnestly contended that this arrest and imprisonment are directly validated by the act I have cited. It is replied that this statute is not applicable to this case, and, if applicable, the statute is void by reason of its unconstitutionality. Two questions then arise: 1. Does the imprisonment of Bean come within the provisions of either the act of 1863 or the act of 1867; if so, is the statute valid? "The statute only covers acts done under orders or proclamations issued by the President, or under his authority. It does not cover all acts done by officers in the military service of the United States simply because they are acting under the general authority of the President as Commander-in-Chief." The validation of acts of military officers is confined to acts done in pursuance of or in aid of a proclamation or order of the President, or by his authority, or with his approval. No such proclamation or order has been called to the attention of the court; it is virtually conceded that none exists. The approval or authority of the President is not shown. It is not claimed that any approval or authority was actually given. But it is claimed, first, that the authority of General Pitcher was in law the authority and approval of the President. Such a proposition is not well founded. Second, that the acts of the defendants are by the statute held prima facie to have been authorized by the government, assuming that the construction placed by the defendants upon the statute is correct, and that from the commission of an act the presumption is that it was authorized by the President, and that such a presumption must be rebutted. Yet, after all the testimony in this case, it is too plain for contradiction that such presumption, if it ever technically existed, no longer exists. It has been proved who alone did make, issue, or authorize the order under which the act was done. All the persons who made

the order, or executed it, have appeared as witnesses, and do not claim that any authority was derived from or approval was given by the President. It is, therefore, my duty to say to you that no justification existed for this imprisonment, and that it was entirely unwarranted by law.

Your only question is in regard to damages. The simple arrest of this man was comparatively of little consequence. If he had been arrested and taken to headquarters, and then sent off, it would have been an illegal act, but one which would have called for very small damages. If he had been arrested without warrant and taken before a United States commissioner, it would have been technically an illegal act, but of no great moment. The importance of this case consists in the imprisonment and the purpose of the imprisonment. The imprisonment is the gist of this action. The first written statement of the arrest and the reasons of the arrest was made by Captain Henry, on November 20th, and seems to me of some importance: "Arrested A. J. Bean, charged with having taken part of the money paid in for substitutes, and then being privy to their desertion, and is held for the return of the money." After he was imprisoned it was not the purpose of the defendants to try him in the civil courts until the order came from Washington to deliver him to the civil authorities. It was the open and avowed purpose of the defendant to hold him by strong hand until the money was paid, which money, when paid, did not belong to the government. They considered they had a right so to do. I have already told you that he was held without autority of law and in violation of law.

For this he is entitled to just damages, to be recompensed for his expenses, to be paid for the suffering to body and mind from confinement in a common cell in the State-prison, for the disgrace, for the separation from his family at a time when it was very important that he should not be separated from them; in brief, for the loss of his personal liberty, and for the immediate and necessary losses in his business resulting from his confinement, and to the pecuniary loss which he immediately and directly sustained. I can only say that they must be just damages, not extravagant, not what we would ask beforehand to go into State-prison for six months, but such as in the exercise of sound and sober judgment, uninflamed by passion, you think he ought fairly to receive. If you think Henry was influenced in all his conduct by a determination to prevent his release, that he delayed reporting to Maj. Austin, tried to thwart all his attempts to obtain a release, and to keep him in after he was ordered to be turned over to the authorities, and so was guilty of what the law calls malice or ill-will, then you will give, in addition to remuneration, what are called punitive damages; that is, such a sum as will punish him for such malice and teach him and others the importance of refraining from similar conduct.

99 To the omission of the court to charge as requested, and to all the charge of the court placing a construction upon said acts of Congress, and to so much of the charge as relates to the attempted justification of the defendants under said acts of Congress, and the evidence hereinbefore detailed, the defendants excepted.

N. SHIPMAN, *Judge.*

Defendants' Exhibit No. 1.

PROVOST MARSHAL'S OFFICE,
SECOND CONGRESSIONAL DIST. OF VERMONT,
Windsor, Dec. 13, 1864.

Major W. AUSTIN, U. S. A.,
A. A. Provost-Marshal-General:

SIR: I have the honor to return herewith the communication of Andrew J. Bean, with the following statement:

On the 15th June, 1864, John Guptil and Eldon Brown were examined at the headquarters in this district, as substitutes for Perley M. Hastings, of Corinth, a man liable to draft, and Ransom E. Smith, of Rockingham, drafted the 31st day of May, 1864. Upon being questioned
100 about their bounty they stated they were to receive two hundred dollars each. We explained to them that, enlisting as substitutes, they would not receive any bounty from the government, nor the monthly pay from the State, which they would be entitled to if they enlisted as volunteers, and this was done, as neither of the principals, Hastings or Smith, were present, but these men seemed to be tended by these men whose names were not known to me.

After this conversation with them they left the office apparently dissatisfied with the amount of bounty they were to have, and soon left town with the three men with whom they they came. The next day they returned with the runners and a substitute-broker by the name of Stevens, and said they had arranged to go as substitutes as they had proposed the day before, and upon their signing the contracts they were clothed, with the expectation that they would be placed upon the muster and descriptive role and forwarded the next day; and on the day they were sent to rendezvous we expected the principals for whom they enlisted would receive their discharge, and in fact we never had
101 executed a discharge for the principal until the substitute left for the rendezvous; and the men were not put under guard, for we did not have any guard at headquarters, and the next morning runners and substitutes had left, carrying off eight hundred ($800) doll's, leaving four hundred with one of the clerks in the office.

It was insisted that the substitutes had not been received, and that the principals should not be discharged; an appeal was made to Gen'l T. G. Pitcher, A. A. Provost-Marshal-General, and he decided the government should lose the men.

I sent Daniel N. Beckwith, a deputy provost-marshal, to arrest, if possible, the deserters, and the runners also, if he could find them. He went as far as Boston, but could not find any of them as they had escaped into Canada. The names of the men that came down with the substitutes were Buckley, Jewell, and this Andrew J. Bean, and neither of the three have been seen or heard from till the 11th day of Nov., when M'r Beckwith saw Bean on the cars, at Wells River, and arrested him.

On being interrogated as to his connection with the enlistment
102 of Guftil and Brown, he says he came with them, and received one hundred and thirty-five ($135.00) of the eight hundred ($800,) Buckley and Jewell receiving the remainder, but denies having anything to do with the escape of the men. It is believed, however, that he knew all about it; and if he did not, he, with the other two runners, received $800, which they had no right to keep, and under Gen'l Dix's order, as we understood it from Gen'l Pitcher, either of these three men

should be arrested and held until they paid back the money thus obtained, and I told M'r Bean that I should hold him until the $800 was returned, with the expense of the officer to Boston to arrest them.

Bean at first said he should not try to refund the money, but would pay over the $135 which he received if I would release him, to which proposal I declined. The dext day he sent me word not to report his case and he would procure the money, $800, and pay it over. I therefore did not make any special report of his arrest, but in my tri-monthly letter of Nov. 20, 1864, I mentioned his arrest, and the reason why, and that he was held for the payment of this $800.

I am satisfied that Buckley, Jewell, & Bean contrived the plan
103 to enlist the men, take two-thirds of the bounty, knowing that they intended to desert, but as their intentions cannot be shown, perhaps, I think that inasmuch as they had the $800 they should pay it over to government, and as Buckley and Jewell are in Canada, and Bean owns his connection with them, I think he should be held till the $800, with all expenses, is paid.

Very respectfully, your ob't s't,

GILMAN HENRY,
Capt. and Pro. Mar. 2d. Dist. V't.

Defendants' Exhibit No. 2.

PROVOST-MARSHAL'S OFFICE,
SECOND CONGRESSIONAL DIST. OF VERMONT,
Windsor, Dec. 20th, 1864.

Maj. W. AUSTINE, U. S. A.,
A. A. Provost-Marshal-General:

SIR: I have the honor to call your attention to some additional facts in the case of Andrew J. Bean, which have been obtained since my report of Dec. 13, 1864. M'r Beckwith says that he has been informed that Buckley and Jewell started from Canada with Guptil and Brown to enlist them at some station in this State; that Buckley knew
104 that Jewell was a deserter from the 9th reg't Maine vols.; that after coming this side of the line they fell in company with Bean, who also knew that Jewell was a deserter; and that Bean threatened to inform against Jewell and have him arrested unless he would share the profits in the sale of Guptil and Brown when they should be enlisted; whereupon Bean was taken into copartnership, and the five came to this office, where Guptil and Brown were enlisted, and deserted as set forth in the report of Dec. 13th; and the five met again in Canada, and there divided a portion of the $800 received from the principals, with Guptil and Brown, Bean, Buckley, and Jewell having the remainder.

Jewell is still in Canada, but Buckley is at or near Island Pond, in this State, and I would respectfully suggest that M'r Beckwith be directed to proceed and arrest Buckley, and bring him to these headquarters, to be dealt with as his case may require.

Very respectfully, your ob't servant,

GILMAN HENRY,
Capt. and Pro. Mar. 2d Dist. V't.

Def'ts' Exhibit No. 3.

(Copy.)

G. W. KINNEY.

Interrogatories proposed by counsel for defendants:

105 Int. 1. Will you state your name, occupation, and residence?

Ans. George W. Kinney, bailiff; and I reside in Basford, adjoining the village of Coaticook.

Int. 2. Did you know Andrew J. Bean when he lived in Coaticook?

Ans. I did.

Int. 3. How long have you held the office of bailiff?

Ans. About six months.

Int. 4. Did you have one or more conversations with said Bean in reference to his procuring men to enlist in the United States Army?

Ans. I did; several.

Int. 5. Will you state the substance of the conversations that you have had with Bean in reference to that matter?

Ans. I was talking to him in regard to this matter, asking if he didn't think it rather rough to be taking these fellows over the other side to get shot, or words to that effect. He replied he didn't calculate to have them shot; if they were smart, he should have them back in a few days. I asked him how much he had made in the matter. Said he didn't know; he guessed, taking the thing altogether, he hadn't made

106 very much. Spoke of his getting into jail; said that if it hadn't been for that, should have come out a good deal better. Don't remember anything further, only that he was in hopes to get something back for that; didn't know as he should.

Int. 6. Did you know any of the men that he took out and had enlisted?

Ans. I might at the time, but don't remember them now; it has been a long time.

Int. 7. In your conversation was there anything said in regard to his enlisting any man more than once?

(Objected to as leading, by att'y for pl'ff.)

Ans. I think there was. Said some of them had been out already two or three times. This is as near as I can recollect.

Int. 8. Did you happen to know a couple of fellows that were around here in 1864, by the names of Elden Brown and Isaac Thomas?

Ans. I can't tell. It is rather my impression that there was a man by the name of Brown, and one by name of Thomas. Shouldn't think they were here long.

Int. 9. Did you know, or did you learn from Bean, that he took out these two men?

Ans. I couldn't swear that I did, but I think he did; that is my impression.

107 Int. 10. Do you know whether these men were back here soon after?

Ans. I couldn't say.

Int. 11. Will you state whether there were, during the war, quite a class of men here that were reported to be deserters?

Ans. There were a good many that were generally so known.

Int. 12. Will you state whether you understood from M'r Bean that his dealings were with this class?

Ans. I think I did so understand that to a certain extent such was the case, but not altogether.

Cross-examined by counsel for pl'ff:

X-int. 1. When was this first conversation to which you allude, with M'r Bean?

Ans. I can't tell the particular time.

Int. 2. Can you tell the particular place?

Ans. I think one conversation took place at the Coaticook House.

Int. 3. When was that?

Ans. I can't tell the exact time; but during the war in the United States; the latter part of it.

Int. 4. How long ago was that?

Ans. That is as near as I can tell.

Int. 5. Who was present at that time?

108 Ans. Can't say whether any one was present or not.

Int. 6. Was it in the bar-room?

Ans. I think it was.

Int. 7. Was there a good many there?

Ans. I think not. There was nothing very private about the conversation.

Int. 8. Can't you remember any one who was present besides you and M'r Bean?

Ans. I cannot.

Int. 9. Were you acquainted with many of the "skedaddlers"?

Ans. I don't know that I was, intimately; some of them worked for me, and some of the deserters worked for me.

Int. 10. Where was the other conversation that you refer to?

Ans. I don't know as I can tell; it might have been in his shop, or where we met elsewhere; he was free to talk with me.

Int. 11. Who was present then?

Ans. I can't tell you; don't know as anybody; there might have been; we used to meet frequently, evenings and days.

Int. 12. State the names of the deserters who you said had enlisted two or three times.

Ans. I cannot.

Int. 13. Were you pretty intimate with M'r Bean?

109 Ans. I was. He was a sociable fellow, and we were frequently talking together as we met.

Int. 14. Did you use to meet frequently and have a good deal of talk?

Ans. We did.

Int. 15. Used to have a good deal of joking and fun together?

Ans. Frequently.

Int. 16. Wasn't it during such conversations that the talk you have related occurred?

Ans. I was in earnest when I asked him the question, and I rather guess he meant what he answered.

Int. 17. You understood it to be quite a common thing for men to go down into the States and enlist and then come right back?

Ans. I did, for a while.

Int. 18. Then the same substitute-brokers would take them down and enlist them again, would they?

Ans. I so understood it. I thought, and think now, it was too much so.

Int. 19. Did you have any personal knowledge of any such business?

Ans. I did not, more than they told me. I never had anything to do with the sub. business.

110 Int. 20. Do you mean to state, on your oath, that Andrew J.

Bean ever told you that he had enlisted a man that he knew to be a deserter?

Ans. I couldn't swear positively that he ever made such a remark direct.

Int. 21. Would you state positively that he ever said that he helped a man to desert?

Ans. I got the idea from what he said, that if he enlisted men he helped them to get back again.

Int. 22. Won't you give his precise words?

Ans. I couldn't do it further than I have stated.

Int. 23. Did you ever know of one's coming back that he did enlist?

Ans. I did not.

Int. 24. Did M'r Bean ever state to you in regard to men getting away anything more than you have stated?

Ans. I think not.

(Signed) G. W. KINNEY.

111 *Def'ts' Ex. No. 4.*

I, ELDON BROWN, of Sweden, county of Oxford, and State of Maine, aged forty years, being duly sworn, depose, testify, and say, that in July, 1863, I was drafted in United States service and reported at Lewiston, Maine, examined and accepted, and had a furlough for thirty days. Within that time I was sick; had run of a fever; went to the office, thinking I might get a final discharge; they, knowing my situation, told me they would see me again. Did not report again, but went to Canada.

I remained in Canada in different employments till June, 1864. Being at that time at work for Samuel Cleveland, it was often suggested to me by him and others, viz, Elisha T. Colton, Andrew J. Bean, said Cleveland, & G. W. Buckland, to go to the State and enlist. I think all these persons knew I was a deserter.

About this time, being hard times and not much pay, I made up my mind to go to the States and enlist. I went to Benjamin F. Jewell and talked with him about going with me. He told me if I wanted to go to go on, and he would overtake me on the road. He also told me there was another man, by the name of Isaac Thomas, going, and he would send him along with me.

112 We started, and when near Barnstead Corner he overtook us and took us in. We proceeded to within a few miles of Stanstead Plains, when G. W. Buckland overtook us & claimed me as his man. I got into the wagon and drove with him to Barton Landing, where we took the train for White River Junction. When at Barton, A. J. Bean came aboard. He, Jewell, & Buckland had some talk unbeknown to me. We all proceeded to White River Junction. We first went to Lebanon, N. H., Jewell, Buckland, & Bean going to the office of the provost-marshal there to see about enlisting us. We did not enlist there. At the Junction or Lebanon, can't say which, we had some conversation about changing names. Thomas called his name John Guptil. I concluded to go by my own name, thinking if I got through and got my discharge I should be discharged in my own name. We then went back to White River Junction, falling in with one James Stevens. Then we all went with him to Woodstock. I think Stevens went with us, but am not certain. We went to the provost-marshal's office, were
113 examined by the doctor, and pronounced fit for the service.

By some reason or other, don't remember what, we did not en-

list, but went back to White River Junction same afternoon. We found Stevens at the Junction. He gave me five dollars to go back to Woodstock and enlist. We, Bean, Buckland, Stevens, Thomas, and myself, returned same evening to Woodstock. Next morning we, Thomas & myself, went in and enlisted, he by the name of John Guptil and I in my own name. We each were to receive two hundred dollars as a bounty. The money, as I supposed, was deposited in envelopes and put into the hands of an officer—M'r Beckwith, I think—which we were to receive when under guard. Our clothes were changed, and our old ones sent back to Canada by Bean & Buckland, I think. An hour or two after we enlisted I went to M'r Beckwith and asked him to let me have some money. He let me have five dollars from the $200.00 we were to receive. That afternoon, being somewhat disheartened, I made up my mind to leave if I could get away. The five dollars was all I re-
114 ceived from the $200.00. Towards night I left and pursued my way towards Maine, Thomas with me. He and I proceeded together to the eastern part of New Hampshire, he going direct to Canada, as I afterwards learned. I went to Maine, stopped a few weeks, and returned to Canada, finding my clothes at Cotton & Jewell's hotel. I went to Jewell and asked him if he would let me have some money, as I had had pretty hard times. He said he got nothing out of the operation, but would see Bean & Buckland & see what they would do. He went & saw them, and I received $25.00 from Buckland, I think; am not positive.

ELDON BROWN.

The following were the interrogatories and answers on cross-examination by plaintiff's counsel:

1. Why did you desert, and leave your money with defendants here at Woodstock?

Answer. I don't know of any other reason, except I did not know whether I should get it unless I went into the service.

2. Were you not told by one or both of these defendants, or
115 other officers with them, and in foregoing marshal's office, that you could do better than to go for two hundred dollars?

(All that part of the foregoing question relating to others than themselves objected to by defendants.)

Answer. I don't recollect what was told me in that respect, but there was something of that kind; but I don't recollect what it was.

3. By which of these defendants was anything said of that tenor?

Answer. I don't recollect of seeing either of them at the office.

4. What other officers were there at the office on duty?

Answer. I don't recollect of seeing any of them there except the doctor.

5. Did you not see the defendant Beckwith there?

Answer. I don't recollect of ever seeing him till he came to me in Maine this summer.

6. Did you not know who had your $200.00?

Answer. All I recollect, it was put into the hands of some officer at the office.

7. Did you not see that officer?

Answer. I saw him that day, of course; but should not recognize him since.

8. Did not that officer tell you you'd have done better?

116 Answer. I don't recollect that he did.

9. How many statements have you written or known to being written in relation to this matter?

Answer. Only one before this day.

10. Who wrote down that?

Answer. Mr. Beckwith.

11. When and where?

Answer. Last week, at Mr. Henry's, at Woodstock.

12. How long have you been here at Woodstock at this time?

Answer. I came here a week ago last Tuesday.

13. By whose procurement?

Answer. M'r Beckwith's.

14. Where have you stopped while here?

Answer. At this hotel.

15. At whose expense did you come, and at whose expense are you here? State fully the contract which induced you to come here.

Answer. M'r Beckwith came to me in Maine on the day we started to come here, saying he had a U. S. subpœna, & tendered me $10.00, saying he would pay me what the law allowed when I returned.

16. Is that the Beckwith who is one of these defendants?

Answer. It is.

117 17. Is that the man who held your envelope of money when you were here to enlist?

Answer. I cannot tell; can't recollect the countenance.

18. Who went to see you in Maine with Beckwith?

Answer. No one.

19. Have you seen defendant Henry since you were here to enlist till this time?

Answer. I have not.

20. Have you ever received a letter from him?

Answer. I have not.

21. Or from Beckwith?

Answer. Have not.

22. Did you receive your $5.00 from this defendant?

Answer. I don't recollect whether from him or some one else.

23. Have you ever received your balance of $195.00?

Answer. I have not.

24. Did you not state at M'r Bean's house in Coaticook, to M'r Sheafe, that the officers at the provost office at Woodstock advised you that you would do better than go for that $200.00, and that it was on that account of what they told you that you deserted?

Answer. I don't recollect.

118 25. Was what you stated at that time the truth, as you then remembered it?

(This question was objected to by defendants.)

Answer. I don't recollect what it was, but don't intend to tell anything but what is true.

26. Did you ask M'r Bean for any money after returned to Canada?

Answer. I don't recollect as I ever did.

27. Have you been told by Beckwith, or any one, that M'r Bean would not appear at the taking of these depositions?

Answer. M'r Beckwith told me he thought if he did.

28. When and where?

Answer. Don't recollect. I was in the time & have been here in this place.

29. Did you ever tell M'r Bean, before you returned to Canada from Woodstock, that was a deserter?

Answer. Don't remember that I did.

30. Did you ever know of anybody telling him you was a deserter?

Answer. I did not.

31. Did you know that he understood you to be such before you returned from Woodstock to Canada?

Answer. I do not.

32. Who told you at Coaticook to go ahead and some one would overtake you?

Answer. B. F. Jewell.

119 33. Was it he that said Isaac Thomas was going also?

Answer. I think he said who, but said it was a man.

34. Had you ever seen Isaac Thomas before?

Answer. Don't think I ever saw him before that day; might have seen him the day before.

35. Where is he now?

Answer. I think he is dead.

36. You spoke of a converstation on the train between Bean, Jewell, & Buckland. Can you tell what any of that conversation was about?

Answer. I cannot. Not near enough to hear any conversation on the cars.

37. Did you have any talk with M'r Bean at any time in reference to changing your name or Thomas?

Answer. Not particularly with him; the talk was with the whole, as near as I can recollect.

38. Do you now swear that M'r Bean was present when you talked about the change of names, and that that talk was audible to him?

Answer. I should not want, really, to swear to that, but I think he was present.

39. Where was this talk about the change of names?

Answer. Either at Lebanon or White River Junction, don't remember which; I think it was out of doors, but can't recollect.

120 40. Was there not a crowd of people there at the time?

Answer. Don't recollect; think we were outside by ourselves, alone.

41. Did M'r Stevens go to Woodstock with you the first time?

Answer. Don't recollect whether he did or not.

42. Who went with you to the provost-marshal's office, at Woodstock, the first time?

Answer. I think it was Jewell, Bean, & Buckland.

43. Are you positive that M'r Bean went there at all?

Answer. I am not positive, but think he did.

44. Who went there with you the second time?

Answer. I think it was Stevens, Buckland, & Bean.

45. Was not M'r Buckland left sick at White River Junction the second time?

Answer. I don't recollect that he was.

46. Did not Jewell come with you the last time instead of Buckland, and take your clothes away for you?

Answer. I don't recollect that he did.

47. Did M'r Bean say anything to you about returning to Woodstock to enlist?

Ans. I don't recollect that he did.

48. Did not M'r Bean, all along, try to have you enlist at Lebanon instead of Woodstock?

Answer. Don't recollect any such talk.

121 49. Did he not tell you that was where he took all of his men?

Answer. I don't remember that he did.

50. What makes you think your clothes were sent back to Canada by Bean & Buckland?

Answer. Because I think there were none others from Canada at Woodstock, & therefore think they were sent by them.

51. What direction did you give about sending them?

Answer. That they were to be carried to Coaticook, to a friend of mine, James M. Rean, and if I did not return to Canada he was to send them to my folks in Maine.

52. To what person did you give this direction?

Answer. I could not say whether to Bean or Buckland, one or the other.

53. Where did you find your clothing on your return?

Answer. At Cotton & Jewell's hotel, where I ordered them to be left.

54. Did your friend M'r Rean live there?

Answer. He did not live at the hotel, but at another part of the village.

55. Why did not M'r Beckwith let you have more than $5.00 when you asked for your money?

Answer. I don't think I asked him for any more than that.

122 56. Did not Stevens promise you more money in hand as soon as enlisted?

Answer. I don't recollect that he did.

57. Did you ask Beckwith for just five dollars, naming the same?

Answer. I don't think I asked him for any particular sum, but asked for just what he had paid the other man who went in first.

58. Why did you go back to your home in Maine?

Answer. To see my folks.

59. You had no fears of arrest then, had you?

Answer. I had fears, but kept secreted most of the time.

60. Did you ever have any business with M'r Bean with reference to your enlisting?

Answer. I did not.

ELDON BROWN.

Defendants' Exhibit No. 5.

I, BENJAMIN F. JEWELL, of Sabago, in the county of Cumberland, and State of Maine, aged forty years, being duly sworn, testify and say that, at the time of the breaking out of the rebellion, I resided in the State of Maine, and enlisted in the Second Maine Cavalry, but did not go to the front, but remained in camp there about three months,

123 and soon afterwards went to Canada. My object in so doing was to avoid the further service. After getting to Canada I opened a hotel there with a man by the name of Cotton. In the early part of the summer of 1864 Eldon Brown, who was at that time in Canada, came to me, and said he was out of work, and spoke about enlisting. He told me there were a number wanting him to go, but he was afraid with them, but said if I would go with him he would like to have me go. I told him I would make no talk with him in Canada any further than to set his time, and go ahead. He did so. When I came up to the door of the hotel with my team, M'r Cotton asked me where I was going. I gave him no direct answer. He said if I was going out with a substitute he wanted to send one by me. I told him to send one along ahead, then.

Near Barnstead Corners I overtook Elden Brown and Isaac Thomas. They got into the carriage with me, and rode with me to within about two miles of Stanstead Plain, as near as I can recollect. Gilman W. Buckland drove up by the side of me and says, "Now hold on, you
124 have got a man there that belongs to me, and I will have him, too." I asked which one he claimed. He said, "Brown." He said if I took him over the line he would report me as a deserter. I told M'r Brown if he wanted to go he had better go with him, and I would go along just the same and try to have him well used. He concluded to go with Buckland, and got into his carriage. We went on to Barton Landing, on the Passumpsic Railroad. We took the train there for White River Junction. At a station south of there, I think it was Barton, Andrew J. Bean came aboard the train. M'r Buckland, Brown, Thomas, Bean, and myself were aboard then. M'r Bean came to me and said, "You have got a man there that belongs to me." I asked him which one it was. He said, "Brown." I told him he would have to talk with Buckland, who claimed him; I had nothing to do with him at all. He went to Buckland, and they had *they had* some conversation. I can't tell what it was, but it was about Brown.

When we got to White River Junction, we, the five persons above named, got together, when they, Bean & Buckland, told me what they had done; it was to divide the profits if they put him in—Brown,
125 I mean; next thing was to get some names for them to go in by. I having Thomas in my care to put this man Brown and Thomas were, as they said, deserters.

We all went from White River Junction to Lebanon, where the provost-marshal's office was, to see what we could get for the men. Not succeeding to our satisfaction there, we concluded to go elsewhere. The reason was they were shipping their men daily direct to Concord. Brown did not want to go to the front so soon, but wanted longer time to get away, he not designing to go to the front at all; went back to White River Junction; took dinner there. We fell in with a man by the name of Stevens. This man was buying men, and said he would give so much for them there, or something more to take them to Woodstock put them in. We concluded the best way was to take them to Woodstock. We procured a team at the Junction, & came to Woodstock. I mean the five above named, M'r Beckwith and the driver of the team being added.

When we came to Woodstock, Bean, Buckland, and myself went to the provost-marshal's office first, and afterwards all went there,
126 but did not enlist the men for the reason that the men could *could* not get their bounty till they got to camp, and they would not enlist. We drove back to White River Junction. Saw Stevens again; I think he gave them some money, can't tell how much, to go back to Woodstock and enlist. After they, Brown & Thomas, had received the money they started to Woodstock the 2d time with Stevens. I remained at the Junction. My being subject to the service, Bean and Buckland advised me to remain there, and they would do the business of enlisting the men at Woodstock.

Next day they came back, and we all, Bean, Buckland, and myself, took the train for Canada. I had received nothing out of the bounty before that from Thomas. They said they would fix me all right when we got home. After we got home I said something to them about it. They said they had nothing for me, that I was lucky to get back myself. When Thomas got back to Canada, which was in about a week after I got back, and in about three weeks when Brown got back,

Brown called on me for money. We went to M'r. Bean's shop.
127 I said something to M'r Bean about helping Brown to some money. He said he could nothing for him, he did not get any money down there. Bean said, see Buckland, and as much as he (Buckland) will do, he, Bean, would do as much. I saw Buckland, but without succeeding in getting any relief for Brown for either. I knew from both Brown & Thomas, before we left Canada, they were deserters. It was distinctly understood by us all, including Brown & Buckland, that both Brown & Thomas were deserters, and that was the reason why we were selecting other names by which they were to be enlisted. At least this was the way I understood it, and supposed all understood it so.

B. F. JEWELL.

Cross-examination and interrogations by plaintiff's counsel, and answers to same by witness.

1. By whose procurement did you come to Woodstock to depose in this case, and how long have you been here?

Answer. By M'r Beckwith, and I came here a week ago last Tuesday.

128 2. Did Beckwith profess to bring you here by authority or did you come voluntarily?

Answer. He came and gave me $10.00, and said I must come right along with him, & so I did.

3. Please answer to the last interrogatory more definitely?

Answer. I could not answer more definitely; he served no papers on me at all. I should, if it was by authority, if he was going to bring me here.

4. By what authority did he profess you must come right along with him?

Answer. Nothing further than that he said he had a subpœna, and wanted me to come right along with him.

5. Did he show his subpœna or read it to you or give you a copy of it?

Answer. He did not.

6. Are you willing to swear that you ever saw M'r Bean in the provost marshal's office in Woodstock at all?

Answer. I am.

7. Which time do you mean, the first or last?

Answer. Both times, I think; I know the first time.

129 8. Did you ever tell Bean that you were a deserter?

Answer. I could not swear I ever told him that I was.

9. Have you been in the business of a substitute-broker yourself, directly or indirectly?

Answer. I have.

10. Was Canada the basis of your operations mainly?

Answer. I never did anything only what I did from Canada.

11. Is it not a fact that you feared a return from Canada into the U. S. service, and how was such return considered by brokers there?

(Objected to by defendant.)

Answer. I never was in the business enough to answer that question. I never enlisted one man in my life, and I should rather he would not come back.

12. Why so?

Answer. I should have been subject to prosecution under the enlistment act.

13. Was it not a fact that the Canadians were on the alert to
130 detect parties enlisting men in the province for the States?
Answer. They were.

14. You said in your direct examination that when Brown & Thomas got back from Woodstock they paid them some money to go back to Woodstock and enlist. Who do you mean by they?

Answer. I should have said Stevens paid the money.

B. F. JEWELL.

Direct examination resumed:

Question 1. Did Bean's conversation with and conduct towards you satisfy you that he knew you to be a deserter, as much as though you had told him you was one, either while trying to dispose of Brown & Thomas or at any other time?

(Objected to by pl'ff att'y.)

Answer. Well, I think Bean knew I was a deserter; he said I was, and I said I was not.

2. When was this conversation; before or after these men were enlisted?

Answer. I think it when we were going home after the men were enlisted.

3. What did you understand by their advice at White River
131 Junction to have you keep a little out of the way?

(Objected to as relating to matter not touched upon in cross-examination.)

Answer. I took it that they thought I might be arrested as a deserter; that was the reason why I kept out of the way.

B. F. JEWELL.

Cross-examination resumed:

1. Do you mean to say that you kept out of the way because they feared that you would be arrested, or because you feared it?

Answer. Because I feared it.

BENJAMIN F. JEWELL.

132 And on the said 9th day of October, A. D. 1875, the defendants prayed out a writ of error to the Supreme Court of the United States, and the same was duly allowed and ordered to be filed, and was filed on said 9th day of October, A. D. 1875.

And on the same 9th day of October, A. D. 1875, a citation was duly issued out of this court, which citation is hereto annexed; and on the same day said citation was duly returned into this court with service accepted thereon.

And on the same 9th day of October, A. D. 1875, the said defendant duly filed in this court, for the use of the plaintiff in this cause, a true copy of the writ of error and citation herein before referred to.

And on said 9th day of October, A. D. 1875, and during said October term, it was ordered that execution be stayed until the determination in the Supreme Court of the said writ of error.

133 By the honorable N. Shipman, one of the judges of the circuit court of the United States for the district of Vermont, in the second circuit.

To Andrew J. Bean:

Whereas there lately issued out of the Supreme Court of the United States a writ of error directed to the judges of the circuit court of the United States for the district of Vermont, stating that in the record and proceedings, as also in the rendition of the judgment of a plea in the said court before the judges thereof, between Andrew J. Bean, plaintiff, and Gilman Henry and Daniel N. Beckwith, defendants, a manifest error hath happened to the great damage of the said Henry and Beckwith, and whereas for the correction of that error in due manner the said writ has been issued returnable to the next stated term of
134 the Supreme Court of the United States held at the city of Washington on the second Monday of October, A. D. 1875:

You are therefore hereby cited to appear before the said Supreme Court of the United States, at the city of Washington, on the second Monday of October, A. D. 1875, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at Rutland, in the district of Vermont, in the second circuit, the 9th day of October, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the one hundredth.

[SEAL.] N. SHIPMAN,

One of the Judges of the Circuit Court of the U. S. for the District of Vermont, in the Second Circuit.

135 Service of the annexed citation is hereby accepted, and the reception of a copy thereof is hereby acknowledged, and all objections to its not being served thirty days before court is hereby waived.

Rutland, Vermont, October 9th, 1875.

A. J. BEAN,
Def't in error.
By E. J. PHELPS,
Att'y.

(Indorsed:) Andrew J. Bean v. Gilman Henry & Daniel N. Beckwith. Citation. Returned, service accepted, October 9th, 1875. B. B. Smalley, clerk.

(Indorsement on cover:) No. 294. Daniel A. Beckwith and Gilman Henry, plaintiffs in error, vs. Andrew J. Bean. Vermont C. C. U. S. Filed 28th October, 1875.

REC. 294–3

In the Supreme Court of the United States.

OCTOBER TERM, 1878.

DANIEL A. BECKWITH AND GILMAN HENRY, PLAINTIFFS IN ERROR,
vs.
ANDREW J. BEAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF VERMONT.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1878.

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vs.
ANDREW J. BEAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF VERMONT.

BRIEF FOR THE UNITED STATES.

This case has been before this court heretofore. (See 18 Wallace, 510.)

The action is *trespass* for false imprisonment, and the only plea, *not guilty* (p. 19, top).

The facts will be found in the record beginning at close of page 18 and ending upon page 48. An outline thereof is as follows:

The imprisonment complained of extended from November 11, 1864 (p. 19, top), to April 26, 1865 (p. 22, top), was undergone in a State's prison of Vermont (p. 19), and was caused by the defendants, who therein acted under color of their offices (p. 24), Henry being then United States provost-marshal for the second Congressional district of Vermont, and Beckwith his assistant (p. 23). The circumstances attending the imprisonment were as follows:

It was a part of Henry's official duty as provost-marshal (12 Stat., 732, &c.) to enlist soldiers for the war then existing. Accordingly, on the 14th of June, 1864 (p. 23), Bean and two other persons, all being residents of Canada, brought to his office for enlistment as *substitutes* two men, who having been accepted, $1,200 was paid on account of the *principals* so released from military service, $800 of which went to Bean and his associates, and $400 to the substitutes. On the same day after effecting the enlistments Bean and his associates returned to Canada; and, on the night after, the persons so enlisted deserted, and remained thenceforth out of the service. Thereupon the defendants were impressed with the belief that Bean, his associates, and the deserters had acted in the matter of enlistment under a conspiracy to defraud the United States—the desertion being a part of their plan (p. 23, bottom). He communicated these views to General Pitcher, then acting assistant provost-marshal-general for the State, having his headquarters at Brattleboro' (p. 23, bottom), whereupon the latter directed him *orally* to endeavor to have the supposed conspirators arrested.

Accordingly, Henry gave Beckwith a written order to make the arrest, and the latter, after several months

endeavor, arrested Bean on the 11th of November, 1864, while travelling on the cars in the northern part of the State (p. 24, middle). On the next day he carried him before Henry, at Windsor, who immediately committed him to the State's prison at that place, informing him that he would be so held until the $800 received as above was surrendered to the United States (p. 24, bottom).

On the 20th of November, Henry, as was his duty, reported the arrest, through the office at Brattleboro', to the provost-marshal-general at Washington (p. 30, bottom), and on the 13th of December (p. 37), at the instance of Major Austine, who, in the previous October, had succeeded General Pitcher at Brattleboro' as acting assistant provost-marshal-general for the State, he made a more detailed report of the case to that officer.

The case having by Austine been reported to General Dix, then commanding that military department, the latter ordered (January 3 and 24, 1865, see pp. 26 and 27), that Bean should be detained until the $800 was paid to the United States. In the end Bean was let out of prison on the 26th of April, 1865 (p. 22), by the orders of the Secretary of War (p. 29), being then turned over under bail to the civil authorities, and afterwards, upon failure by the grand jury to find a bill, being set free. From the time of his arrest Bean protested his innocence of the charge against him, and demanded a trial thereupon, but was told by Henry that he could not have such trial (p. 20, top).

The above was all the evidence given by the defendants as to any order, by the President or any one else, for the arrest or imprisonment of Bean, nor did the plaintiff offer any evidence to the contrary; and the defendants being examined as witnesses did not claim that

the orders, spoken of as made in that connection, had been known to or approved by the President (p. 31).

The defendants, however, offered to show that the persons enlisted as above were already, at the time of such enlistment, deserters from the United States Army, and, as such, refugees in Canada, and that Bean probably knew that they were such, and that he enlisted them with the knowledge that they would desert again, *and for that purpose.*

To that end they tendered a deposition by one George W. Kinney, residing at a place adjoining Coaticook, in Canada, who, among other things, said that *Bean told him that he did not calculate to have the men whom he furnished to the United States Army shot; if they were smart he would have them back in a few days.* Kinney also said that *there were, during the war, quite a class of men there reported to be deserters; and that he understood that, to a certain extent, but not altogether, Bean had his dealings* [as enlistment broker] *with that class* (folios 105 and 106).

In the same connection, the defendants (below) also tendered a deposition, by one of the parties enlisted as above [Eldon Brown], who testified that, *in July*, 1863, *he was drafted into the United States Army in Maine, and within thirty days deserted, and went to Canada; that in June*, 1864, *Bean and others who, as he thought, knew he was a deserter, persuaded him to go to the States and enlist* (folio 111). *Shortly afterwards he went along with Bean, one Jewell, and one Buckland* [the parties above spoken of as Bean's *associates*]. *One Isaac Thomas also went along to enlist. There was talk of changing the names of himself and Thomas. Thomas changed his to Guptil* (folios 112 and 119).

A deposition by Jewell, named above, was also tend-

ered by Beckwith and Henry. He testified that *he was himself a deserter, and he told, in detail, the circumstances of the expedition by Bean, Buckland, and himself (then residing at Coaticook aforesaid), to enlist Brown and Thomas* (folios 122, &c.); *that Bean and Buckland had some conversation apart on the way, and after it was over told him that they had agreed to divide the profits upon Brown; that the next thing was to get some names for them (Brown and Thomas) to go in by, and that Brown and Thomas were deserters* (folios 124, 125, and 127).

The admission of the above depositions was objected to not for *form* but on the ground that its *substance* was not competent evidence (folio 79, &c.); that no part was admissible, or that if any part was of itself admissible, it was so intermingled with what was inadmissible as to be incompetent (folio 81).

The objections to the depositions were sustained by the court, and exceptions to such rulings duly allowed (folio 80).

The depositions were offered for the purpose of satisfying the jury of the misconduct of Bean, although by evidence not known to Beckwith and Henry prior to his release.

The court excluded them upon the ground that *the guilt or innocence of Bean was not a question for the determination of the jury, but that all the facts and circumstances with which the defendants were acquainted prior to the imprisonment, could be admitted for the purpose of rebutting malice, and showing that they acted in good faith, but that they could not give in evidence circumstances of which they had never heard until after the commencement of this suit* (folio 80.)

For their defense, Henry and Beckwith relied upon the acts of Congress of March 3, 1863, and March 2, 1867, which are respectively as follows:

1. "That any order of the President or under his authority, made at any time during the existence of the present rebellion, shall be a defense in all courts to any action or prosecution, civil or criminal, pending or to be commenced, for any search, seizure, arrest, or imprisonment made, done, or committed, or acts omitted to be done under and by virtue of such order, or under color of any law of Congress, and such defense may be made by special plea or under the general issue." (Sec. 4, 12 Stat., 756.)

2. "That all acts, proclamations, and orders of the President of the United States, or acts done by his authority or approval after the fourth of March, anno Domini eighteen hundred and sixty-one, and before the first day of July, eighteen hundred and sixty-six, respecting martial law, military trials by courts-martial or military commissions, or the arrest, imprisonment, and trial of persons charged with participation in the late rebellion against the United States, or as aiders or abettors thereof, or as guilty of any disloyal practice in aid thereof, or of any violation of the laws or usages of war, or of affording aid and comfort to rebels against the authority of the United States, and all proceedings and acts done or had by courts-martial or military commissions, or arrests and imprisonments made in the premises by any person by the authority of the orders or proclamations of the President, made as aforesaid, or in aid thereof, are hereby approved in all respects, legalized and made valid, to the same extent and with the same

effect as if said orders and proclamations had been issued and made, and said arrests, imprisonments, proceedings, and acts had been done under the previous express authority and direction of the Congress of the United States, and in pursuance of a law thereof previously enacted and expressly authorizing and directing the same to be done. And no civil court of the United States, or of any State, or of the District of Columbia, or of any district or Territory of the United States, shall have or take jurisdiction of, or in any manner reverse any of the proceedings had or acts done as aforesaid, nor shall any person be held to answer in any of said courts for any act done or omitted to be done in pursuance or in aid of any of said proclamations or orders, or by the authority or with the approval of the President within the period aforesaid, and respecting any of the matters aforesaid; and all officers and other persons in the service of the United States, or who acted in aid thereof, acting in the premises, shall be held *prima facie* to have been authorized by the President, and all acts and parts of acts heretofore passed, inconsistent with the provisions of this act, are hereby repealed." (14 Stat., 432.)

Accordingly, after the evidence was closed the counsel for the defendants moved the court to dismiss the suit (p. 31, bottom).

This was refused.

Thereupon the same counsel moved the court to instruct the jury that the facts which the defendants' evidence tended to show, if believed by the jury, constituted a justification for both of them, and that as there was no evidence to rebut the presumption of law, under the above statute of 1867, that the President had given

orders to arrest the plaintiff, the jury were bound to presume that he had given such orders (p. 32, top).

This also the court declined to do.

Afterwards, among other instructions to the jury, the court gave the following (p. 35):

"It is earnestly contended that this arrest and imprisonment are directly validated by the act I have cited. It is replied that this statute is not applicable to this case, and, if applicable, the statute is void by reason of its unconstitutionality. Two questions then arise:

"First. Does the imprisonment of Beau come within the provisions of either the act of 1863 or the act of 1867; if so, is the statute valid? 'The statute only covers acts done under orders or proclamations issued by the President or under his authority. It does not cover all acts done by officers in the military service of the United States simply because they are acting under the general authority of the President as commander-in-chief.' The validation of acts of military officers is confined to acts done in pursuance of or in aid of a proclamation or order of the President or by his authority or with his approval. No such proclamation or order has been called to the attention of the court; it is virtually conceded that none exists. The approval or authority of the President is not shown. It is not claimed that any approval or authority was actually given, but it is claimed, first, that the authority of General Pitcher was in law the authority and approval of the President. Such a proposition is not well founded.

"Second. That the acts of the defendants are by the statute held *prima facie* to have been authorized by the

government, assuming that the construction placed by the defendants upon the statute is correct, and that from the commission of an act the presumption is that it was authorized by the President, and that such a presumption must be rebutted. Yet, after all the testimony in this case, it is too plain for contradiction that such presumption, if it ever technically existed, no longer exists. It has been proved who alone did make, issue, or authorize the order under which the act was done. All the persons who made the order or executed it have appeared as witnesses and do not claim that any authority was derived from or approval was given by the President. It is, therefore, my duty to say to you that no justification existed for this imprisonment, and that it was entirely unwarranted by law.

"Your only question is in regard to damages. The simple arrest of this man was comparatively of little consequence. If he had been arrested and taken to headquarters and then sent off it would have been an illegal act, but one which would have called for very small damages. If he had been arrested without warrant and taken before a United States commissioner, it would have been technically an illegal act, but of no great moment. The importance of this case consists in the imprisonment and the purpose of the imprisonment. The imprisonment is the gist of this action. The first written statement of the arrest and the reasons of the arrest was made by Captain Henry on November 20th, and seems to me of some importance: 'Arrested A. J. Bean, charged with having taken part of the money paid in for substitutes, and then being privy to their desertion, and is held for the return of the money.'

"After he was imprisoned it was not the purpose of

orders to arrest the plaintiff, the jury were bound to presume that he had given such orders (p. 32, top).

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"After he was imprisoned it was not the purpose of

the defendants to try him in civil courts until the order came from Washington to deliver him to the civil authorities. It was the open and avowed purpose of the defendant to hold him by strong hands until the money was paid, which money, when paid, did not belong to the government. They considered they had a right so to do. I have already told you that he was held without authority of law and in violation of law.

"For this he is entitled to just damages; to be recompensed for his expenses; to be paid for the suffering to body and mind from confinement in a common cell in the State-prison; for the disgrace; for the separation from his family at a time when it was very important he should not be separated from them. In brief, for the loss of his personal liberty, and for the immediate and necessary losses in his business, resulting from his confinement, and to the pecuniary loss which he immediately and directly sustained.

"I can only say that they must be just damages, not extravagant; not what we would ask, beforehand, to go into State-prison for six months, but such as, in the exercise of sound and sober judgment, uninflamed by passion, you think he ought fairly to receive.

"*If you think Henry was influenced in all his conduct by a determination to prevent his release; that he delayed reporting to Major Austine; tried to thwart all his attempts to obtain a release, and to keep him in after he was ordered to be turned over to the authorities, and so was guilty of what the law calls malice or ill-will, then you will give, in addition to remuneration, what are called punitive damages; that is, such a sum as will punish him for such malice, and teach him and others the importance of refraining from similar conduct.*" (Record, p. 36.)

For error we assign the action of the learned court below, in the following particulars:

1. In declining to instruct the jury that upon the case made before them the defendants below were justified.

2. In instructing the jury that upon such case no question existed as to an authorization by the President, and that, upon the whole, no question remained for them excepting that of damages.

3. In the exclusion of the several depositions of Kinney, Brown, and Jewell.

I. The court erred in declining to instruct the jury that upon the case made before them the defendants below were justified.

a. The statutes quoted above are competent to give the indemnity which they propose.

1. The policy of *oblivion*, promoted by them at such times, is most beneficent.

2. The class to which they belong appears repeatedly with excellent effect in English history, and in that of the several States of the Union. See the great case of Phillips *vs.* Eyre, (Law Rep. 4, Queen's Bench, 225, and 6, Queen's Bench, 1; also Clark *vs.* Dick (1 Dillon, 9); Porter *vs.* Dunn (1 Bay (S. C.), 53); Drehman *vs.* Stifel (41 Mo., 184, and 8 Wall., 595); Smith *vs.* Owens (42 Mo., 508); Potter *vs.* Sturdivant (4 Greenleaf, 154); State *vs.* Gatzweiler (49 Mo., 18); Grim *vs.* Weissenburg (57, Pa., 433); Hess *vs.* Johnson (3 W. Va., 645); North Carolina, Acts of 1771, c. 10, (Ired. Revisal, p. 259), 1783, c. 5 (*ib.* 454), and 1786, c. 2, s. 11 (*ib.* 574); Franklin *vs.* Vannoy (66 N. Caro. Rep., 145).

3. There is nothing in the Constitution to forbid them.

b. The *prima facie* case set up by the statute is not, in any substantial degree, affected by the other evidence.

1. Inasmuch as no evidence had been introduced by the plaintiff to impeach the case under the statute, the defendants were not called on to corroborate it. It already entitled them to a verdict. (Crane *vs.* Morris, 6 Peters, 598.) They had a right to rest upon it. Farther evidence to the same effect, then, was superfluous, and if offered, should have been excluded. The circumstance that General Pitcher approved of or ordered it, or that Major Austine, or General Dix did so, is not contradictory of the statutory case. That circumstance only shows that they, *as well as the President*, approved of it, and the introduction of their names lent to the defendants the additional presumption that the President had authorized it *through* General Pitcher and General Dix, to whose action the same statutory presumption applies.

The statutory authorization by President Lincoln was a circumstance for the court to take notice of *sua sponte*, and *no mere abstinence* from actual evidence of such authorization, no matter if (as here) connected with (say) *abundant* evidence of authorization by mesne superiors, detracts from the effect established by the act.

II. At all events the court erred in holding that, upon the case presented to the jury, there was no ground for suggesting an authorization by the President, and that, therefore, the only question for them was as to *damages*. (Greenleaf *vs.* Birch, 9 Peters, 292.)

III. The court erred in excluding severally the depositions of Kinney, Brown, and Jewell. These went to show, by evidence not known to the defendants until after the plaintiff had been released, that the plaintiff

had enlisted the deserters in question, knowing that they had already deserted, and contriving that they should do so again.

The case made for its introduction was that the defendants already *believed* that there had been such contrivance, and acted on this in arresting, reporting, and holding the plaintiff.

The *reasonableness* of such belief is a matter of importance. It is not easy for police officers to explain all the grounds for the suspicions upon which they act. Their suspicion is often an *instinct* beyond their own appreciation, or, at least, power to explain, and its reasonableness is often to be judged of only by the results.

It seems that the circumstance that Bean was in fact *guilty* of what the defendants suspected him, went to show the reasonableness of their belief, and so their *bona fides*. Such guilt, therefore, reflected upon the state of the defendants' minds at the time of their imprisonment, which is, of course, the real point of investigation in this connection.

There is no doubt that if an arrested person turns out in fact to be *innocent*, such event will not *involve* an officer who, at the time of arrest, had good grounds to suspect him, and acted thereupon. Therefore, evidence of such innocence, not known to the officer before the arrest, is incompetent in a suit against him.

In ordinary cases, however, evidence that such party was in fact *guilty*, would prevent any necessity of going into the state of the officer's mind in making the arrest; and, therefore, its competency in these cases would not be discussed in such relation, and will not be found to have been considered in the books.

Here, however, the guilt of the plaintiff is of no impor-

tance *in bar* of the action. It occurs, therefore, to suggest that such guilt reflects light upon the *bona fides* of officers who suspected it; and it is submitted, as a general rule, that officers who act without personal motives may well be held to have acted *reasonably*, whenever the suspicion which controlled them turns out to have been well founded, no matter how slight the clew in their possession when they became involved.

To repeat: Upon the record the case may well be that the jury believed that the defendants acted upon suspicion, *but that such suspicion was unreasonable, and therefore mala fide;* whereas the depositions excluded, one or all of them, would have shown that that official instinct which in the case of sheriffs, marshals, constables, and detectives is aroused, as if it were a sixth *sense*, by the bare presence of criminals, had been duly provoked into activity here.

This point is of additional importance in connection with the circumstance that the court instructed the jury that the case warranted *vindictive* damages.

It is true that the state of the record prevents us from taking advantage of the inadvertency of the learned court in directing the jury that for Henry's misconduct (if established) they might give vindictive damages against both parties. (Clark *vs.* Newsam, Exchequer, 131; see Sedge, Dam., 435, note, and Mayne, Dam., 435; also Robertson *vs.* Wylde, 2 M. and Rob., 201, and Gregory *vs.* Cottrell, 22 L. R., 2, B. 217.) But we submit that a jury in giving such damages has a right to the position of a court called upon to impose a fine, *i. e.*, to be particularly well informed of all the circumstances which show whether and how far the

plaintiff is fit to put into his own pocket a penalty levied from the defendants by way of amending their morals. It might be that, so far as punitive damages are concerned, both parties are *in pari delicto*.

We submit in this connection that if these subjects of the British Crown came into Vermont in time of civil war wantonly, for the purpose of making gain by a fraud upon the United States, any difficulty into which they may have incidentally fallen because of official suspicions and exasperation thereby excited makes no foundation for a claim to *punitive*, as distinguished from *compensatory*, damages.

Evidence therefore of the color of Bean's intentions in so coming was material at least for the administration by the jury of this *quasi* police power to punish the defendants by taking from them for the enrichment of the plaintiff thousands of dollars over and beyond what affords him abundant compensation for every pecuniary loss and all distress of mind and disgrace.

S. F. PHILLIPS,
Solicitor-General.

United States Supreme Court.

No. 294.

DANIEL N. BECKWITH AND GILMAN HENRY,
Plaintiffs in Error,

vs.

ANDREW J. BEAN.

BRIEF FOR DEFENDANT IN ERROR.

E. J. PHELPS,
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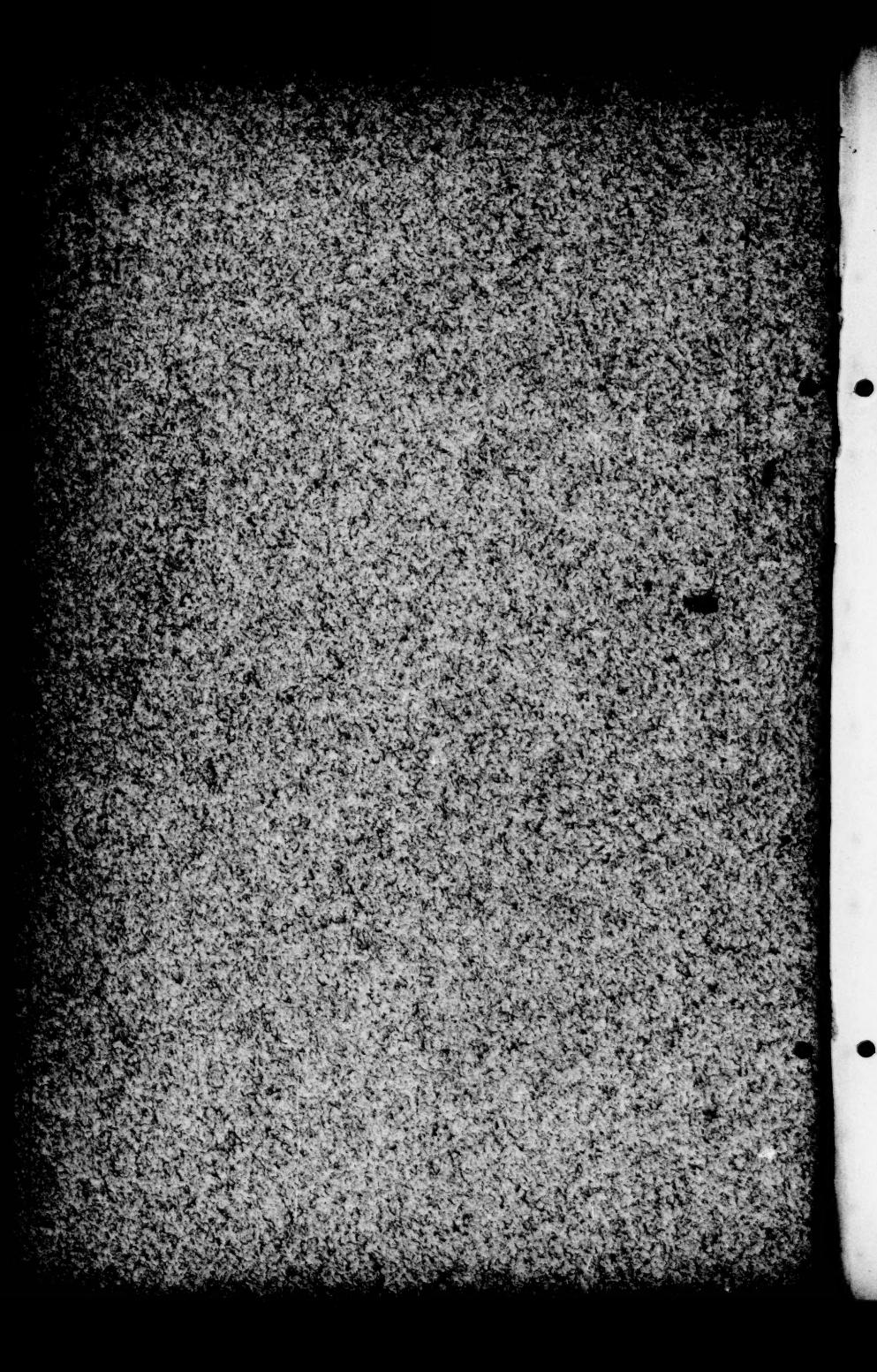
1878.



U. S. Supreme Court.

DANIEL N. BECKWITH AND GILMAN HENRY,

Plaintiffs in Error,

vs.

ANDREW J. BEAN.

No. 294.

Brief for Defendant in Error.

STATEMENT.

This cause has been previously before the court, and is reported in 18 Wallace, p. 510.

The declaration is for an assault and battery, and imprisoning the plaintiff for seven months in the Vermont State Prison at Windsor, without any process of law, and under circumstances of great aggravation, cruelty, and injustice.

See statement of plaintiff's evidence, Record fols. 59 *to* 70.

The defendant pleaded the general issue, and three special pleas.

The substance of the pleas is this :

That the rebellion was on foot. That it became necessary to raise troops to suppress it, and that troops were raised for that purpose in the Second Congressional District of Vermont.

That defendants were military officers, one being a provost marshal, and the other an assistant provost marshal, in that district.

That plaintiff was charged with having been guilty of disloyal practices in aid of the rebellion, and with affording aid and comfort to the rebels, to wit, by enticing soldiers to desert from the army of the United States.

That the defendant arrested the plaintiff on "the charges aforesaid," and delivered him to the keeper of the States Prison in Windsor for safe custody, until he could be brought before the civil tribunals of the United States, on "the charges aforesaid."

That he was detained there until the 1st of May, 1865, when he was brought before a United States Commissioner, and held to bail to answer to "the charges aforesaid."

That between the arrest and the time he was brought before the Commissioner, there was no term of the United States Circuit Court in Vermont.

That in making said arrest and imprisonment, the defendants acted in their military capacity aforesaid.

That the arrest, imprisonment and detention of the plaintiff, were made "under the authority and by the order of the then President of the United States, Abraham Lincoln, since deceased, whose orders as Commander and Chief of the armies of the United States, by the rules and regulations of the army, these defendants were bound to obey."

Record, fols. 20 *to* 33.

Issue was joined on the first plea, the replication *de injuria* was filed to the second, and a general demurrer to the third and fourth.

On the hearing of the demurrer, the judges of the Circuit Court made a certificate of division of opinion,

upon which the cause was carried to the Supreme Court.

It was there held that the pleas were insufficient, because they set forth no order or special authority from the President, under which the acts complained of were done, nor do they aver that the plaintiff was in any way connected with the military service of the United States. And that the Acts of Congress of March 3, 1863, and March 2, 1867, under which the justification was sought to be set up, even if constitutional, do not cover acts done by military officers simply because they are acting under the general authority of the President, but only acts done under orders or proclamations made by him or under his authority, which if made, should be set forth in the plea.

18 *Wallace*, 515.

The case having been remanded, was tried on the general issue, and the first special plea, which was in substance the same with those which had been adjudged insufficient. And a verdict was rendered for the defendants in error on both issues, for $15,000 damages.

Three exceptions were taken by the plaintiffs in error on the trial, one to a point in the charge of the court, and the other two to the exclusion of certain evidence. And the case now comes up on a writ of error based upon these exceptions.

POINTS.

I.—The exception to the charge presents no question that is now open for discussion. It raises the same point that has been already considered and decided by this Court, upon the former hearing of the case.

The instruction requested by the plaintiffs in error on this point was, that the facts which their evidence tended to prove were, if found to be true, a complete justification, under the acts of Congress, for the acts complained of; and that, in the absence of any evidence to prove whether the President issued any order, general or special, in the premises, the jury were bound to presume that he did.

Record, fol. 97.

These propositions are exactly the contrary of the previous decision of this Court, in which it was held that the facts did not constitute a justification, nor bring the case within the provisions of those acts, even if the acts themselves were constitutional, unless an express order from the President, or by his authority, existed; and that such an order, if relied on, must be set forth in the plea, and proved.

That the absence of any proof of a fact raises a presumption of its existence in favor of the party bound to prove it, is a proposition not likely to be successfully maintained.

The charge of the court upon this subject is precisely in accordance with the decision of the Supreme Court.

Record, p. 35.

II.—The letters of the plaintiff in error, Henry, to Maj. Austine, were not evidence in his own favor of the truth of the controverted facts therein stated.

And the ruling of the court on this point was correct.

Record, fol. 79.

The fact that Henry did make reports to his superior officers, and all the action of those officers in

the premises, was allowed to be shown. Plainly he could not make evidence for himself of the truth of facts, by reciting them to a third person.

III.—The depositions offered by the plaintiffs in error, as tending to prove that the defendant in error was in fact guilty of the charge made against him, were properly excluded.

1. It will be observed, that all the evidence offered by the plaintiffs in error, including their own testimony, tending to show their alleged belief in the guilt of the defendant in error, and all the facts and circumstances then known on which such belief was claimed to be founded, were admitted. And that the depositions in questions relate to facts pretended to have been discovered long since, and which could not, therefore, have influenced the action of the plaintiffs in error, in the matter complained of.

Record, fol. 81.

It will also be observed, that no prosecution of the defendant in error on these pretended charges was ever attempted. On his discharge from his seven months of illegal imprisonment, during the whole of which he had been importuning for a trial, in vain, he was "held to bail" by a United States Commissioner "to answer the charges." And no further step was ever taken in the premises. Even that measure was entirely unlawful, because no complaint was made, nor indictment found against him for any offence whatever. He was simply taken by military authority, and without process, before the commissioner, and compelled to give bail to answer "charges" that only existed in rumor, and were admitted by the parties arresting him to be destitute of proof. To accomplish this, a special com-

missioner had to be appointed for the purpose, and special counsel for the government employed, and the business taken out of the hands of the United States District Attorney, and away from the regular Commissioners who had jurisdiction of the case.

Record, fol. 69.

2.—The depositions offered were neither admissible in justification of the arrest, nor in mitigation of damages. The question of the guilt or innocence of the defendant in error is not involved in the case now presented.

(*a.*) The cause of action is not the arrest of an innocent man, but the illegal arrest and long imprisonment, without process of law, of a person charged with an offence, and who was refused the trial he demanded, and in which his guilt or innocence could be shown. Even if he had been guilty in fact, it would in no wise justify the acts complained of.

(*b.*) Nor is this evidence allowable in mitigation of damages. If the defendant in error was guilty, he was amenable to legal prosecution and punishment, but no more the subject of the illegal treatment he received, than an innocent man would be.

The arrest and imprisonment are shown by the admission of the plaintiffs in error themselves, not to have been for the purpose or in furtherance of any such prosecution; but to have been made in order to extort a payment of the money which the defendant in error had received, and which, even if he was guilty, did not belong to the government, nor to the plaintiffs in error, nor to any one whom they represented.

As pointed out in the charge of the court, the first official return made by Henry was that the defendant in error was "held for the return of the money."

Record, fol. p. 36.

And in Henry's official report of Dec. 21, 1864, put in evidence, he admits that they have no evidence of the guilt of the defendant in error sufficient to convict him, and urges that therefore he should not be turned over to the civil tribunals.

Record, fol. 65.

To the same effect is Henry's letter to Maj. Austine, of Dec. 13, 1864.

Record, fol. 102–3.

And also the evidence given by the defendant in error. He was constantly informed by Henry that he could not have a trial, nor be admitted to trial, but would be discharged on payment of the money.

Record, fol. 62.

Under these circumstances, with what propriety can the plaintiffs in error now seek to mitigate the damages sustained by their illegal conduct, by trying to prove the defendant in error guilty of a misdemeanor for which they were not trying to prosecute him or to bring him to justice,—which they admitted at the time he could not be convicted of,—and of which he has been virtually acquitted by the action of the grand jury in refusing to find a bill.

Record, fol. 69.

As well might it be shown in mitigation that the party had been guilty of any other crime, that would tend to discredit him, and to deprive him of sympathy.

3. The rejection of the depositions was also proper, even if parts of their contents had been admissible.

They were offered as a whole. And they are interlarded throughout with hearsay, conjecture, "understanding," and other inadmissible and irrelevant matter. They were objected to specifically upon this ground among others.

Record, fol. 80, 81.

It was not the duty of the court to separate from this mass, the small parts that might be legal evidence, if there were any such parts. If offered as a whole, it must be substantially admissible as such. It is not the case of a deposition of which some isolated portion is objectionable. The inadmissible matter will be found on perusal to be interwoven all the way through.

4. Nor do these depositions tend to establish the guilt of the defendant in error of the charge made against him, of enticing the men, Guptil and Brown to desert, except so far as they state facts previously proved, and conceded by the defendant in error to be true.

To justify the reversal of a judgment for the exclusion of evidence, it must be shown that the evidence offered would have added something material and admissible to the conceded facts in the case, not merely that it would have been harmless.

The offense charged is created and defined by the Statute of the United States.

A careful perusal of the depositions will show, that eliminating what is not legal evidence, and what was before conceded, they do not tend to prove the offence, and make no case proper to be submitted to the jury.

The witnesses are of the worst character, were discredited on cross-examination, and were obtained under circumstances that cast suspicion on both them and their employers.

C. J. Phelps.
Counsel for deft. in error.